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THE LAW AND PRACTICE OF RATING.

RYDE & KONSTAM'S RATING APPEALS,
1894—1904.

*Being Reports of Rating Appeals heard before the London
and other Quarter Sessions, the Queen's and King's
Bench Division, the Court of Appeal, and the
House of Lords, 1894—1904.*

BY

WALTER C. RYDE and E. M. KONSTAM.

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THE
LAW AND PRACTICE
OF
RATING,

BOTH
Within and Without the Metropolis.

SECOND EDITION.

BY
WALTER C. RYDE,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

*Editor of "Reports of Rating Appeals," 1886—1890, 1891—1893, and 1894—1904 ;
of the "Agricultural Rates Act, 1896," and of the 11th Edition of
Lumley's "Union Assessment Acts."*

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PREFACE

TO THE SECOND EDITION.

THE First Edition of this Book, published in August, 1900, was exhausted in about two years. In preparing the Second Edition the general plan of the book has not been altered, but I have taken the opportunity of revising the whole of the original matter, besides doing my best to record and summarize all the new cases on the subject. There have been since 1900 several decisions of importance on points of practice, but it is with the development of the law rather than with the practice, and specially with the law relating to the rating of machinery, that the new matter in this Edition is mainly concerned. The interpretation put by the King's Bench Division in *Crockett and Jones v. Northampton Union*, upon the decision of the Court of Appeal in *Tyne Boiler Works Co. v. Longbenton*, has necessitated the re-writing of a great part of Chapter XXV., and the decisions of Quarter Sessions recorded in that Chapter show how difficult it is to apply the law in actual practice. As recently as March 31st, 1904, the Recorder of Leeds, in *Kirby v. Hunslet Union*, gave a decision adverse to the owners of machinery, while on April 14th, 1904, the Recorder of Hull, in *Eastern Morning News v. Hull Guardians*, gave a decision the other way. These two cases were not heard until nearly the whole of

the Book was in print, and I have therefore been obliged to record them separately in Appendix III. As in the former case an Appeal to the High Court is pending, I have not thought it desirable to add anything by way of comment of my own.

I have endeavoured to limit the size of the book as much as possible, but the reference to nearly 200 additional cases has necessitated some increase. I have added a large number of cross-references from one part of the book to another, in order to render it more convenient for use in Court; and it is hoped that the reader will appreciate the additions, which have involved much extra labour.

In the First Edition I referred to many unreported cases, which were cited only from my own MS. Notes. By the assistance of my friend, Mr. E. M. KONSTAM, I have found it possible to publish reports of these and other cases, under the title of "Ryde & Konstam's Rating Appeals, 1894—1904," which I hope will be of use in continuation of the three Volumes of Reports of Rating Appeals already published by myself.

To my learned friend, Mr. JOHN OGLE, of the Inner Temple, both the reader and myself are much indebted for valuable and careful work in the revision of the proof sheets, and the preparation of the Index and Tables of Cases and Statutes.

W. C. R.

1, BRICK COURT, TEMPLE,
April, 1904.

EXTRACT FROM THE PREFACE

TO THE FIRST EDITION.

IN writing this book an attempt has been made to deal with the Law and the Practice of Rating, and to do so with as much completeness as will satisfy the usual requirements of parochial officers, valuers, and lawyers engaged in the practical administration of rating law.

The main body of the book is divided into two sections: the first dealing with the law; the second with the practice and procedure. The first section is sub-divided into three Parts. I have dealt first with the general questions: (1) Who is the person (if any) liable to be rated, and (2) What is the measure of his liability. I have then dealt specifically with various classes of property (such as railways, gasworks, docks, tolls and tithes), discussing the application of the general principles of rating to such property. This method of treatment undoubtedly involves some repetition; but to anybody, be he lawyer or layman, who has to make—to challenge—or to adjudicate upon—a valuation of a line of railway or a dock, it will (I hope) be useful to have in one chapter a summary of the case law dealing with the particular kind of property under consideration.

The history of the law of rating has influenced me very much in deciding how far I am at liberty to state my own opinion. More than once in the history of the law there have been (in connection with the same point) two groups of decisions, each group being hopelessly inconsistent with the other, though the members of each group were (more or less) in agreement. The conflict has continued until some authoritative decision has shown that one group is founded on a fallacy, and a new epoch is thereby started. For

the present it may suffice to cite as examples, the authoritative decisions of the House of Lords in the *Mersey Docks Case* and the *London Sewers Cases*. In my opinion, there are still on many points—and notably in the case of railways—groups of cases inconsistent with other groups, awaiting some authoritative decision to decide the conflict. Where such a conflict exists, I have thought it my duty to point it out, and not to conceal it by professing to find distinctions which are no distinctions; and I have stated which group of cases is (in my opinion) most in accord with general principles.

In dealing with the “parochial principle” as applied to railways, I have found it a hopeless problem to reconcile the authorities, and the discussion of the soundness of that principle I have placed in an Appendix, as it seemed inconvenient to retain it in the chapter on railways.

In the second Appendix will be found the principal Statutes relating to the Law and Practice of Rating, with extracts from the Agricultural Rates Order, 1896, followed by the Orders of the County of London Quarter Sessions. In printing the Statutes I have (speaking generally) followed the text of the “Statutes Revised,” but I have departed from that text in several instances, of which one may be given by way of example. Section 70 of the Valuation (Metropolis) Act, 1869, is repealed by s. 2 of the Valuation (Metropolis) Amendment Act, 1884. In the “Statutes Revised” not only is the repealed section omitted, but also the repealing words in the later Act. It appears to me that, in this volume at all events, to omit the repealing words of the later Act would embarrass the reader, who would find in that Act no warrant for the omission of s. 70 of the Act of 1869. I have therefore retained the repealing words in s. 2 of the Act of 1884.

It is hoped that this book may prove useful at meetings of assessment committees, and at quarter sessions, where it is difficult, if not impossible, to have access to a law library, and it is intended for the use of many persons whose law library—even if accessible—is not well furnished. For these reasons I have thought it desirable to give longer citations from judgments than would perhaps be found in a text book intended solely for the use of lawyers practising in the High Court. My aim has been to state

what the law is, rather than to say where it may be found ; and I have endeavoured to make practical usefulness the test to determine how much, or little, should be said on each subject.

With the name of every case will be found the date of the decision, a fact of which the importance can hardly be over-stated. In the Table of Cases cited will be found the references to all the contemporary reports.

W. C. R.

1, BRICK COURT,
TEMPLE,

30th July, 1900.



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LIST OF ABBREVIATIONS.

In the chapters relating to the Practice, the following abbreviations are used :

U. A. C. Act, 1862, *for Union Assessment Committee Act, 1862.*

U. A. C. A. Act, 1864, *for Union Assessment Committee Amendment Act, 1864.*

A D D E N D A.

(The cases referred to below were reported in the Law Reports for May, 1904, after the body of the book was in print.)

Page 114, note (*f*): *Alton Urban District Council v. Spicer* is now reported, [1904] 1 K. B. 678.

Page 731, note (*t*): *Hill v. Pannifer* is now reported, *sub nom. Hill v. Pannifer*, [1904] 1 K. B. 811.

THE LAW AND PRACTICE OF RATING.

PART I.

THE PERSONS LIABLE TO BE RATED.

CHAPTER I.

INTRODUCTION.

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Preliminary.—The foundation of the modern law of rating is to be found in the statute, 43 Eliz. c. 2, commonly referred to, without further description, as “the Statute of Elizabeth” (*a*). The Act imposed the liability to be rated, without very precisely defining the measure of value, created the “overseers of the poor,” by whom the rate was to be made, and gave a right of appeal to the quarter sessions against the rate. So far as relates to the liability to be rated, the Statute of Elizabeth stands substantially unrepealed by any later Act of general application (*b*), with the

(*a*) The statute is set out in Appendix II. The Short Titles Act, 1896 (59 & 60 Vict. c. 14), gives to the statute the short title of “The Poor Relief Act, 1601.”

(*b*) Several special exemptions have been created, which are considered, *infra*, pp. 88—126.

one important exception of the Poor Rate Exemption Act, 1840 (*c*), which abolished the liability of the inhabitant, as distinguished from the occupier. The measure of value is now more accurately ascertained by the definition of the "net annual value" (or rateable value), in s. 1 of the Parochial Assessments Act, 1836 (*d*). The poor rate is still made by the overseers under the Statute of Elizabeth (except in parishes where it is made under peculiar provisions of a local Act), but the jurisdiction of the overseers to determine the amount, at which each person is to be rated, is now seriously circumscribed by the elaborate provisions of the Union Assessment Acts (*e*), for the making of valuation lists, on which the rate must be based, and which are subject to revision and alteration by the assessment committee of the union containing the parish (*f*). The right of appeal to quarter sessions against the rate given by the Statute of Elizabeth still exists, but further directions have been given by later Acts, as to time for appealing (*g*), the giving of notices (*h*), and the making of an objection to the valuation list before the assessment committee (*i*).

Liability under the Statute of Elizabeth.—The first section of the statute, 43 Eliz. c. 2, directs the overseers to take order for setting the poor to work, and also

"to raise weekly or otherwise by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, appropriations of tithes, coal mines or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit, a convenient stock of flax, hemp, wool, thread, iron and other necessary ware, and stuff to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish."

Inhabitants formerly rateable for personal property.—The persons made chargeable under this section are "every inhabitant, parson, vicar, and other, and every occupier of lands," etc. The word "inhabitant" includes only residents within the parish, and a person holding property within the parish, but residing

(*c*) 3 & 4 Vict. c. 89, set out in Appendix II.

(*d*) 6 & 7 Will. 4, c. 96. In the metropolis, the definition of "rateable value" contained in s. 4 of the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), is substituted. Both the Acts referred to are contained in Appendix II.

(*e*) These Acts are set out in Appendix II. In the metropolis, these Acts must be read with the Valuation (Metropolis) Act, 1869. There are a few parishes to which the Union Assessment Acts do not apply: *vide infra*, p. 510, note (*f*).

(*f*) These Acts are considered *infra*, pp. 515—537.

(*g*) See 17 Geo. 2, c. 38, s. 4.

(*h*) See 17 Geo. 2, c. 38, s. 4; 12 & 13 Vict. c. 45, s. 1, see pp. 577—579, *infra*.

(*i*) Under s. 1 of the Union Assessment Committee Amendment Act, 1864, set out in Appendix II.; see also p. 553.

elsewhere, is not chargeable as an "inhabitant" (*k*). The liability of an inhabitant (as such) to be rated is now abolished by the Poor Rate Exemption Act, 1840 (*l*); but it will be seen that the existence of the inhabitant's liability down to the passing of that Act is not merely of interest as a matter of history, but is of practical importance to the lawyer in dealing with cases decided before the Act.

The liability of the inhabitant under the Statute of Elizabeth does not depend on the occupation of lands or houses, nor is the quantum of liability measured by the value of the occupation: but shortly after the passing of the statute, it was decided in *Sir Anthony Earby's Case* (*m*), "that assessments ought to be made according to the visible estate of the inhabitants there, both real and personal, and that no inhabitant there is to be taxed by them [*i.e.*, the overseers], to contribute to the relief of the poor, in regard of any estate he hath elsewhere, in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell, and not for any other land which he hath in any other place or town."

Although the liability of the inhabitant to be rated in respect of personal property under the Statute of Elizabeth was so early established, the difficulty of ascertaining the value of personal property made it a common and almost universal practice for the overseers (apparently by agreement with the whole body of ratepayers) not to rate personal property at all, or at most, to rate only such personal property as consisted of stock-in-trade (*n*). In some of the cases cited in the note some of the judges even suggested that personal property was not rateable at all, but it was ultimately established that some personal property at least was rateable.

In *R. v. Andover* (*o*), Lord MANSFIELD said:

"It would make the poor laws very oppressive if a man is to be taxed to the extent of his whole personal estate and income. In that case, every man who has money in the funds would be liable; lawyers for their fees (*p*);

(*k*) *R. v. Nicholson* (1810), 12 East, 330; *R. v. North Curry* (1825), 4 B. & C. 953.

(*l*) 3 & 4 Vict. c. 89, set out in Appendix II.

(*m*) (1633), 2 Bulst. 354; see the remarks on this case in the argument in *R. v. Andover* (1777), 2 Cowp. 550, at p. 560, where the history of the law relating to the rating of inhabitants is reviewed.

(*n*) See, for example, *R. v. Barking* (1706), 2 Ld. Raym. 1280; *R. v. Canterbury* (1769), 4 Burr. 2290; *R. v. Whitney* (1770), 5 Burr. 2634; *R. v. Ringwood* (1775), 1 Cowp. 326; *R. v. Andover* (1777), 2 Cowp. 550; *R. v. Hill* (1777), 2 Cowp. 613; *R. v. Dursley* (1794), 6 T. R. 53; *R. v. Mast* (1795), 6 T. R. 154; *R. v. Darlington* (1795), 6 T. R. 468; *R. v. Startifant* (1796), 7 T. R. 60; *R. v. Hogg* (1787), 1 T. R. 721; *R. v. Ambleside* (1812), 16 East, 380.

(*o*) (1777), 2 Cowp. 550, at p. 565.

(*p*) In *R. v. Startifant* (1796), 7 T. R. 60, an attorney was rated for his professional fees, and it was stated to have been the practice for more than sixty years to rate such fees: but the court quashed the rate.

soldiers for their pay (*q*). But where men are occupiers of houses and have stock-in-trade, whether such stock-in-trade may be taken into consideration is a very different question. Some personal estate may be rateable; but it must be local visible property within the parish."

In *R. v. White* (*r*), it was regarded as settled law that personal property was rateable, and it was held that inhabitants of Poole were rateable for their ships trading from that port; that stock-in-trade was rateable, but that furniture, cash in hand (producing no interest), and money producing interest, but lent on the security of lands in other parishes, were not rateable.

Inhabitants, as such, not now rateable.—Although the rateability of inhabitants (as such) for personal property was ultimately established in the law courts, the decision appears to have been so generally ignored in actual practice by the rating authorities, that when the Parochial Assessments Act, 1836 (*s*), was passed, the language used in the Act, and the form of rate prescribed by the Schedule, were applicable only to the rating of corporeal hereditaments. It was contended in *R. v. Lumsdaine* (*t*), that this amounted to an implied repeal of the Statute of Elizabeth, so far as it related to personal property: but the court held that personal property, if visible and profitable, was still rateable, notwithstanding the Parochial Assessments Act, 1836. This decision led to the passing of the Poor Rate Exemption Act, 1840 (*u*), which enacts that it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock-in-trade or any other property: with a proviso that nothing in the Act should affect the liability of any parson or vicar, or of any occupier of lands, etc. The Act thus brought the law into agreement with the long-established and almost universal practice.

The fact that inhabitants (as distinguished from occupiers) were down to 1840 rateable in respect of personal property must not be forgotten when dealing with the earlier decisions as to the rateability of tolls (*x*), tithes (*y*), and machinery or fixtures (*z*).

"Parson, vicar, and other; tithes inappropriate."—It has been suggested that the special mention of the parson and vicar

(*q*) In *R. v. White* (1792), 4 T. R. 771, it is said to have been the practice in Poole, to rate officers in the army, navy, customs, or excise (being inhabitants), for their salaries: but the court held that salaries could not be rated.

(*r*) (1792), 4 T. R. 771.

(*s*) 6 & 7 Will. 4, c. 96: see Appendix II.

(*t*) (1839), 10 A. & E. 157.

(*u*) 3 & 4 Vict. c. 89: see Appendix II. The Act was originally in force only until December 31st, 1841, but has been continued annually by Expiring Laws Continuance Acts, the last of which is 3 Edw. 7, c. 40.

(*x*) See Chapter XVI.

(*y*) See Chapter XXIII.

(*z*) See Chapter XXV.

immediately after the "inhabitant" in the Statute of Elizabeth was intended to make it clear that the clergy were liable, "notwithstanding Magna Charta, *quod ecclesia sit libera*" (a). If this be the true view, then the words "inhabitant, parson, vicar, and other" in the Statute of Elizabeth may be taken as equivalent to "inhabitant, whether clergyman or layman." It is curious that the statute makes no special mention of tithes in the hands of the clergy as rateable property: for "tithes impropriate, appropriations of tithes," which are specially mentioned in the statute, mean respectively tithes in the hands of lay impropriators, or tithes appropriated by spiritual corporations (such as bishops, monasteries, etc.) to their own use. It is easy to understand the reason for the special mention of such tithes, as the owners would be, in many cases, neither "inhabitants" nor "occupiers" (in the legal sense) of lands or houses in the parish, and would therefore escape from being rated, if not specially mentioned. There is, however, no doubt that the clergy have always been rated for their tithes: at what amount they were rated in early times is another question, and there can be little doubt that before the passing of the Parochial Assessments Act, 1836, deductions were allowed for a curate's salary, and other outgoings, which are not allowed now (b). The history of the rating of tithes, and payments in lieu of tithes is reserved for further consideration hereafter (c).

The owner of tithe rentcharge attached to a benefice is exempt from one half of the poor rate, and certain other local rates, under the Tithe Rentcharge (Rates) Act, 1899 (d).

Occupier of lands and houses.—The person to be rated under the Statute of Elizabeth is the occupier, and not the owner, of land. The liability has been transferred to the owner in some cases by later Acts, which will be considered hereafter (e). In *Sir Anthony Earby's Case* (f), Sir Anthony complained "that he having divers tenants which paid rent unto him, they did charge his tenants by their assessments, and did charge himself also." The judges held, "that by the words and meaning of the statute 43 Eliz. c. 2, they are to assess the occupiers of the land, and not the lessor who received the rents; the occupier being by law only to pay the assessment, unless it be specially provided for as to

(a) See *R. v.* — (1672), 3 Keb. 255.

(b) See especially *R. v. Joddrell* (1830), 1 B. & Ad. 403, *infra*, p. 429; *R. v. Goodchild (The Hackney Tithe Case)* (1853), E. B. & E. 1; 27 L. J. M. C. 233, *infra*, p. 440. See also the second report of the Royal Commission on Local Taxation (1899), with regard to the rating of tithe rentcharge.

(c) *Vide infra*, Chapter XXIII.

(d) 62 & 63 Vict. c. 17, Appendix II., *infra*: see also pp. 116, 117.

(e) As to hereditaments of small rateable value, or let for short terms, see the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), *infra*, p. 60. As to allotments, *vide infra*, p. 66; and as to advertising stations, p. 67.

(f) (1633), 2 Bulst. 354.

this payment between him and his lessor, and so by this to be discharged of this payment of such assessments." And in *Rowls v. Gells* (g), it was said, "the landlord is never assessed for his rent, because that would be a double assessment, as his lessee has paid before."

By far the largest number of persons rated are rated as "occupiers of land or houses." The word "land," as used in the statute, must be understood in the widest possible sense: it includes not only the surface of the earth, but everything under it (h), or over it; so that a telegraph company may be rated for their posts, and even for the wires attached thereto (i), a tramway company may be rated for a tramway laid in a public highway (k), the owner of a hulk may be rated for permanent moorings which he has placed in the bed of a navigable river (l), and gas or water companies may be rated for pipes running through the bowels of the earth (m).

Apart from the question, what is "land" within the Statute of Elizabeth, other questions may arise, viz., who is the occupier, or is there any occupier, to be rated? The former question arises where there is a landlord and tenant, or licensor and licensee, both of whom use, or control the use of, the land. The latter question arises when one person has a more or less restricted use of "land," which may be said to be in the nature of an easement over the "land," while the land is either not used in any other way or is open to all the world. These questions will be considered hereafter in detail (n).

A few words may be said here as to the nature of the poor rate imposed on the occupier. "The poor rate is not a tax on the land, but a personal charge in respect of the land" (o). So that to the validity of the rate it is essential, not only that the land should be within the parish for which the rate is made, but that there should be an occupier of that land who can be made liable. Consequently if the owner is entitled to exemption, but the occupier is not, the liability attaches (p); on the other hand, if the owner is not, but the occupier is exempt, then no liability attaches (q). Again, if the rate is not paid, it is recoverable by

(g) (1776), 2 Cowp. 451, at p. 453.

(h) See, however, p. 7, as to mines, other than coal mines.

(i) See *Electric Telegraph Co. v. Salford* (1855), 11 Ex. 181.

(k) *Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9.

(l) *Cory v. Bristow* (1877), 2 App. Cas. 262.

(m) *R. v. Mayor, etc., of Bath* (1811), 14 East, 609; *R. v. Rochdale Waterworks Co.* (1813), 1 M. & S. 634; *R. v. Birmingham Gas Co.* (1823), 1 B. & C. 506; *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; 28 L. J. M. C. 135.

(n) See Chapter II.

(o) *Rowls v. Gells* (1776), 2 Cowp. 451, at p. 452.

(p) *R. v. Ponsonby* (1842), 3 Q. B. 14.

(q) *Smith v. Guardians of Birmingham* (1857), 7 E. & B. 483; *S. C. sub nom. R. v. Smith*, 26 L. J. M. C. 105, *infra*, p. 91. Cf. also *R. v. Smith* (1860), 30 L. J. M. C. 74; *S. C. sub nom. Smith v. St. Michael, Cambridge*, 3 E. & E. 383, *infra*, p. 92.

distress and sale of the goods of the offender, and of no other person (*r*), and is not charged on the land. The overseers' power of distraining is not like that of a landlord (*s*), so that they cannot distrain on the goods of a lodger, or a stranger, though found on the premises. On the other hand, the overseers can distrain on the offender's goods wherever found, even though in another county (*t*). Neither the existence of an equitable charge (*u*) nor a bill of sale (*x*) protects the offender's goods. But unpaid arrears cannot be recovered from a succeeding occupier, and an occupier going out, or coming in, during the period for which a rate is made, is liable only for so much of the rate as is proportionate to the length of his occupation (*y*).

In strictness it is incorrect to say that land is rateable. The occupier, and not the thing occupied, is rateable. But as the occupier of land is rateable in respect of that land, it is sometimes convenient, for the sake of brevity, to say that the land is rateable. But there is always a danger in substituting for the words of the statute another phrase which is not an exact equivalent. If the substituted phrase be made the foundation of an argument, a fallacy may be involved (*z*).

Coal mines; saleable underwoods.—The express mention of these two classes of property in the Statute of Elizabeth led to decisions that the principle "*expressio unius est exclusio alterius*" applied, and therefore that mines, other than coal mines, and woods, other than saleable underwoods, were not rateable (*a*). These decisions, whether right or wrong, are now met by the Rating Act, 1874 (*b*), which by s. 3 enacts that the statute, 43 Eliz. c. 2, shall extend to the following hereditaments in like manner as if they were mentioned therein, that is to say—

- (1.) To land used for a plantation or a wood, or for the growth
of saleable underwood, and not subject to any right of
common;
- (2.) To rights of fowling, of shooting, of taking or killing game
or rabbits, and of fishing, when severed from the
occupation of the land; and

(*r*) See 43 Eliz. c. 2, s. 2, set out in Appendix II.

(*s*) *In re Marriage, Neave & Co.* (1896), 2 Ch. 663.

(*t*) See the Poor Relief Act, 1814 (54 Geo. 3, c. 170), s. 12, in Appendix II.

(*u*) *In re Marriage, Neave & Co.* (1896), 2 Ch. 663.

(*x*) Bills of Sale Act (1878) Amendment Act, 1882 (45 & 46 Vict. c. 43), s. 14.

(*y*) See the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 16, as amended by 45 & 46 Vict. c. 20, s. 3, in Appendix II. See also pp. 54—56.

(*z*) Instances will be met with in dealing with the rating of tolls (Chapter XVI.), and, perhaps, also in the application of the "parochial principle" to the rating of canals and railways.

(*a*) See, as to mines, *Morgan v. Crawshay* (1871), L. R. 5 H. L. 304; and, as to saleable underwoods, *L. v. Minchinhampton* (1762), 3 Burr. 1309; *Eyton v. Mold* (1880), 6 Q. B. D. 13.

(*b*) 37 & 38 Vict. c. 54, set out in Appendix II.

(3.) To mines of every kind not mentioned in the statute,
43 Eliz. c. 2.

And by s. 14 of the Rating Act, 1874, so much of the Statute of Elizabeth as relates to the taxation of an occupier of saleable underwoods is repealed.

Rights of sporting.—When severed from the occupation of land, rights of sporting were in effect at one time not rateable; for where one person had the sporting rights of fishing, shooting, etc., over land which was in the occupation of another person, the owner of the sporting rights could not be rated for them, because they were incorporeal rights in gross, and as such not within the Statute of Elizabeth; and the occupier of the land was held not to be rateable for the sporting rights, because they did not form part of the value of his occupation (*c*). This difficulty is now disposed of by s. 3 of the Rating Act, 1874, the effect of which is stated in the preceding paragraph (*d*).

Advertising stations.—The Advertising Stations (Rating) Act, 1889 (*e*), was passed, not so much to make property rateable which was not rateable before, as to meet difficulties which had arisen in finding out who was the right person to be rated for land, which was used for advertising, and either was or was not otherwise occupied. Even when a person rated for land used for advertisements was held not rateable, because he was not in occupation, it was still left as an open question whether the true occupier could not be rated for the enhanced value which the use of the land for advertisements gave to that land (*f*). If it could be shown that the person who used land for advertising purposes was in occupation of the land, then he was rated for such occupation (*g*), even before the passing of the Act. The effect of the Act, and the cases which led to the passing of it, are considered below (*h*). These cases help to show what kind of user amounts to “occupation” of land for which a person can be rated.

(*c*) See Chapter XXII.

(*d*) See also s. 6 as to the method of valuing such rights.

(*e*) 52 & 53 Vict. c. 27, set out in Appendix II.

(*f*) See *R. v. St. Pancras* (1877), 2 Q. B. D. 581, at pp. 587, 588.

(*g*) See *Taylor v. Overseers of Pendleton* (1887), 19 Q. B. D. 283; *Ryde's Rat. App.* (1886—1890) 276, *infra*, p. 68.

(*h*) See pp. 69—71.

CHAPTER II.

OCCUPATION.

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An attempt to explain what is meant by "occupation."—We have already seen (a) that the occupier is the person to be rated

(a) *Vide supra*, pp. 5—7.

under the Statute of Elizabeth (*b*) ; we must, therefore, endeavour to explain what is meant by "occupation," in order to know who is the "occupier," or (as is necessary in some cases) to know whether there is any "occupier" at all. For either the same person may be both owner and occupier ; or one person may be the owner while another is the occupier ; or there may be an owner but no occupier. In the last-mentioned case, there is nobody who can be rated.

There is no statutory definition of the words "occupier" and "occupation" as used in connection with the law of rating (*c*). Passages are to be found in some of the cases (*d*) which suggest that "occupation," for the purposes of rating, means "possession"; that the "occupier" is the person who, if there were a trespass committed on the premises, would be the person to bring an action of trespass for it. But the word "possession" may be used in more senses than one (*e*), and it has more than once been contrasted with "occupation." Thus, in *R. v. Watson* (*f*), it was said that "occupation implies possession, and trespass can only be brought by him who is in possession of the land." And in *R. v. St. Pancras* (*g*), LUSH, J., said :

"It is not easy to give an accurate and exhaustive definition of the word 'occupier.' Occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation (*h*). The owner of a vacant house is in possession, and may maintain trespass against any one who invades it, but as long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it, and keeps it ready for habitation, whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year.

"On the other hand, a person who, without having any title takes actual possession of a house or piece of land, whether by leave of the owner or against his will, is the occupier of it. Another element, however, besides actual possession of the land, is necessary to constitute the kind of occupation which the Act contemplates, and that is permanence. An itinerant showman who erects a temporary structure for his performances, may be in exclusive actual possession, and may, with strict grammatical propriety, be said to occupy the ground on which his structure is placed, but it is clear that he is not such an occupier as the statute intends. As the poor rate is not made day by day, or week by week, but for months in advance, it would be absurd to hold that a person, who comes into the parish with the intention to remain

(*b*) The statutes which, in certain cases, make the owner liable in addition to, or in substitution for, the occupier, are reserved for future consideration. See Chapters III. and IV.

(*c*) The word "owner" is defined by s. 20 of the Poor Rate Assessment and Collection Act, 1869 (see Appendix II.), for the purposes of that Act.

(*d*) See for example *Jones v. Mansell* (1779), 1 Doug. 302, at p. 304 ; *Allan v. Liverpool* (1874), L. R. 9 Q. B. 180, at p. 191 ; *Paris and New York Telegraph Co. v. Penance Union* (1884), 12 Q. B. D. 552, at p. 558.

(*e*) See Pollock and Wright on Possession, at pp. 26—28.

(*f*) (1804), 5 East, 481, at p. 485. Compare this case with *Newling v. Pearse* (1823), 1 B. & C. 437. See also *Hare v. Overseers of Putney* [1881], 7 Q. B. D. 223, at p. 231, *infra*, p. 17.

(*g*) (1877), 2 Q. B. D. 581, at p. 588.

(*h*) See *Crowther Smith v. New Forest Union*, Ryde's Rat. App. (1886—1890), 311, *infra*, p. 11.

there a few days or a week only, incurs a liability to maintain the poor for the next six months (*i*). Thus, a transient temporary holding of land is not enough to make the holding rateable."

In this passage it is plain that "legal possession" and "actual possession" mean two entirely different things. The former term appears to mean the legal title to use the land, the latter the bodily presence of the occupier on the land, or the acts by which he makes use of or controls the land. The existence of "legal possession" thus understood is mainly, if not entirely, a question of law; the existence of "actual possession" is mainly, if not entirely, a question of fact. It is submitted that the true view of the law is that in order to make a person rateable as an "occupier" under the Statute of Elizabeth, he must be in "actual possession," in the sense in which those words are used in the passage above quoted; but that "legal possession," although insufficient to create rateability, cannot be wholly disregarded in considering whether certain acts on the part of the person whom it is sought to rate, amount to "actual possession" of the land of which he has the "legal possession" (*k*). The rule may, perhaps, be expressed by saying that to constitute a person the "occupier" of land, he must have "a *de facto* possession, that is to say, actual physical prehension of the particular portion of the soil, to the substantial exclusion of all other persons from participating in the enjoyment of it" (*l*).

Occupation distinguished from bare ownership.—The owner of land (or a house) who does not use it in any way is not rateable, because he is not in occupation, although he may exclude other persons from it. Thus in *Crowther Smith v. New Forest Union* (*m*) the appellant was the owner of building land, which he endeavoured unsuccessfully to let, but which he used in no way, except by fixing a bill to a tree, stating that the land was to let. The Court of Appeal held that he was not rateable though he had the legal possession, because he was not in actual possession: and Lord ESHER, M.R., said, "legal possession is not enough to make the appellant an occupier assessable to the poor rate" (*n*). If, however,

(*i*) The injustice here suggested could not at the present day arise, for assuming the rate to be made for six months and the showman to be "in exclusive actual possession" for only a week, he would (if rated) be liable only for a part of the rate, proportionate to the length of his possession. See s. 16 of the Poor Rate Assessment and Collection Act, 1869, *infra*, p. 54. As to intermittent occupation of a market, see p. 319.

(*k*) The question how far title is material, in considering the question of occupation, is dealt with *infra*, pp. 51—54.

(*l*) This sentence is taken from Clerk and Lindsell on Torts, Chap. XIII., where it is used to define the possession which a person without title must have to enable him to bring an action of trespass. As to the meaning of "exclusive occupation," see p. 47, *infra*.

(*m*) Ryde's Rat. App. (1886—1890), 311; 61 L. T. 870; 54 J. P. 324.

(*n*) See also *R. v. St. Pancras* (1877), 2 Q. B. D. 581, *supra*, p. 10; *R. v. Morgan* (1834), 2 A. & E. 618; but compare with the latter case *R. v. Bradshaw* (1860), 29 L. J. M. C. 176; 2 El. & El. 836; *infra*, p. 572. Note also the distinction between *Overseers of Bootle v. Liverpool Warehousing Co.* [1901], 17 T. L. R. 550; 65 J. P. 740; and *Mayor, etc., of Southend-on-Sea v. White* [1900], 17 T. L. R. 5; 65 J. P. 7; *infra*, p. 12.

the owner of land or a house uses it, however slightly, he may be rateable. "The owner of a vacant house . . . as long as he leaves it vacant, is not rateable. If, however, he furnishes it, and keeps it ready for occupation, whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in a year" (o). So, too, it has been held in Ireland, that the owner of an unfurnished house is not rateable (p), but that the owner of a furnished house ready for letting, but unlet, is rateable, even though the house be furnished only for the purpose of being let furnished (q).

Houses closed during the winter.—In *Mayor, etc., of Southend-on-Sea v. White* (r) the tenant of a shop at the seaside closed it during the winter months, and removed all his stock, but left there a few shelves, mirrors, moveable tables, and other chattels, which would be wanted when he opened the shop again for business; but it was found as a fact that, until the stock was brought back, the premises could not be used, and that business could not be carried on lucratively during the winter months. It was held that the tenant was rateable as the occupier in the winter. In a very similar case, *Gage v. Wren* (s), where the tenant of a lodging-house at Lowestoft removed all her furniture, except a few tenants' fixtures, fittings, and other things, and ceased to reside in the house, which was shut up during the winter, it was held that the tenant was rateable, as occupier, for the general district rate under s. 211 of the Public Health Act, 1875. Lord ALVERSTONE, C.J., said that if things were left in the house without any intention of returning, and merely with a view of finding a purchaser or an incoming tenant, the proper inference of law was that there was no evidence of occupation. CHANNELL, J., pointed out that the things left in the house were chattels, from which it follows that the tenant had a beneficial occupation of the house, while it was shut up, in that it was used for storing chattels, which it would have cost the tenant something to remove and store elsewhere. It must be noticed that if the things left behind by the tenant had not been chattels, but had formed part of the rateable hereditament, the tenant would not have been held to be in occupation. A tenant may well be willing to give a rent (however small it may be) for a house, in order to preserve his chattels stored therein from damage; but one cannot imagine a tenant willing to pay a rent to a landlord merely in order to preserve the

(o) See *R. v. St Pancras*, cited on p. 10.

(p) *Sligo Corporation v. Wynne* (1873), Ir. R. 7 C. L. 465.

(q) *Stanton v. Powell* (1867), Ir. R. 1 C. L. 182; 15 W. R. 362.

(r) [1900], 17 T. L. R. 5; 65 J. P. 7. Compare *Overscers of Bootle v. Liverpool Warchousing Co.* [1901], 17 T. L. R. 550; 65 J. P. 740.

(s) [1903], 67 J. P. 32.

landlord's house from damage. The crucial question therefore is whether the things stored in a house, which is shut up, are part of the rateable hereditament, or must be regarded as the property of the hypothetical tenant (*t*). If they are not part of the rateable hereditament (*u*), the tenant is rateable, but not otherwise (*x*).

As appears from the judgment of CHANNELL, J., in *Gage v. Wren* (*y*), there is no real hardship in rating property throughout the year, although it can be profitably occupied only during the summer season. Suppose a lodging-house at the seaside is let at 100*l.* a year: the rent for the year is fixed with the knowledge of both landlord and tenant that the season will last, say, for six months only, and for that reason the rent is lower than it would otherwise be. If the rateable value is based upon the rent thus reduced, and the tenant pays rates on that rateable value in the summer months, he would be getting the benefit of the reduction twice over if the house were not rated during the winter months.

If an occupier desires to raise the question whether, although rateable, he is rateable at a reduced amount because his house is occupied only as a storehouse for chattels, he cannot raise the question when a distress warrant is applied for (*z*). He must appeal to quarter sessions, if the property be outside the metropolis, or, if it be inside, must get the valuation list altered by means of a supplemental or provisional list (*a*).

Occupation of grass land.—A difficulty sometimes arises in the case of grass lands, where there is an interval between the time when a tenant goes out, and the entry of the owner to cut the grass, which has been growing in the meantime. Where a stranger comes in as a new tenant, it is hardly possible to argue that he has been (either actually or constructively) in occupation before his tenancy commenced. But the owner has a right to enter directly his tenant goes out, and he may abstain from exercising his right of pasturing cattle on the land, not because he does not want to use the land, but because he does want to make hay thereon. While he is cutting the grass and making hay on his own land he is clearly in occupation, but when does the occupation begin? In *Pembroke v. Overseers of Wye* (*b*), the tenant of grass land went out on October 11th, 1881; a rate was made on October 25th, 1881, and

(*t*) It is of course immaterial whether they are the property of the actual tenant or not.

(*u*) Chapter XXV. deals with the question what degree of annexation is sufficient to make things part of the rateable hereditament.

(*x*) See *Overseers of Bootle v. Liverpool Warchousing Co.* [1901], 17 T. L. R. 550. As to the value of a building used merely as a storehouse for its contents, see *Staley v. Castleton* [1864], 33 L. J. M. C. 178; *infra*, p. 160.

(*y*) [1903], 67 J. P. 32. Compare *Farnham Flint and Gravel Co. v. Farnham Union* [1901], 1 K. B. 272; Ryde and Konstam's Rat. App. (1894—1904), 217, *infra*, p. 403.

(*z*) See Chapter XXXI., *infra*.

(*a*) See Chapter XXXII., *infra*.

(*b*) (1883), 47 J. P. 359.

another on April 25th, 1882. The owner, having previously unsuccessfully endeavoured to let the land, entered on July 7th, 1882, cut the grass, made it into hay, and stacked it on the land. The overseers thereupon added the owner's name, as occupier, to both the rates. It was held that the owner could only be rated as occupier for the period subsequent to July 7th, 1882 (*c*).

Occupation of a house where only part is used.—In the case of an ordinary dwelling-house, if the occupier makes use of only some of the rooms, he is still rateable for the whole. But apparently this rule does not apply where the unused part of the house constitutes a separate rateable hereditament, as in the case of "flats" built under one roof (*d*). Thus in *R. v. St. Mary-the-Less, Durham* (*e*), the appellant was the owner of a house and garden. He used one room for working at a lathe, and other rooms for storing corn, tools, and lumber. He permitted a poor man and his wife to live rent free in the kitchen, the door communicating between that part and the rest of the house being stopped up. The owner cultivated the garden, and for this he was willing to be rated. It was held that he was rateable for the whole house.

In *R. v. Aberystwith* (*f*), the appellant, who owned a house and shop, during his absence from home left his assistant in possession of the shop (*g*), which was parted off from the rest of the house by laths nailed in the passage. The appellant paid for the cultivation of the garden; the key of the house was left with a friend, and during his absence other friends were allowed to reside in the house, which communicated with the garden. The appellant's furniture remained in the several rooms, ready for use. It was held that he was rateable for the whole. Lord ELLENBOROUGH, C.J., said (*h*): "There is no instance where a man has been permitted to carve out the occupation of his house in the manner now attempted, locking up one room and then another, but using as much of the house as he found convenient. This would make a new system of occupation by sub-divisions."

In *R. v. St. Mary-the-Less, Durham* (*i*), and in *R. v. Aberystwith* (*k*), cited above, an attempt was made to escape from being

(*c*) See also *R. v. Bucks JJ.* (1834), 3 Nev. & Man. 68; where, however, the decision of the Queen's Bench turned upon a technical point of practice. See also *Mogg v. Yatton* (1880), 6 Q. B. D. 10; *infra*, p. 45; *R. v. Heaton* (1856), 20 J. P. 37, cited *infra*, p. 41, note (*d*). As to the rateability of a person in occupation for part of the period for which the rate is made, see p. 54.

(*d*) Cf. *Allchurch v. Hendon Union* [1891], 2 Q. B. 436, *infra*, p. 31, where the occupier of each half of a house comprising two flats was held to be rateable for his own half only.

(*e*) (1791), 4 T. R. 477.

(*f*) (1808), 10 East, 354.
(*g*) The judgment assumes that the assistant carried on business *for the appellant* and not on his own account. His occupation would therefore be the occupation of the appellant.

(*h*) 10 East, at p. 357.

(*k*) (1808), 10 East, 354.

(*i*) (1791), 4 T. R. 477.

rated for part of a house by shutting up that part. In both cases, the Court held that the person rated was, notwithstanding the sub-division, rateable for the whole house. At the time when those cases were decided, the courts were far less willing than they are at the present day to recognize the existence of two distinct occupations, and two separate rateable hereditaments under one roof; and it was considered that structural severance was essential to the existence of distinct occupations, but this doctrine is now exploded (*l*). The prevalence in modern times of the custom of building flats, artizans' dwellings, and similar small tenements (*m*), under one roof, has, perhaps, modified the view of the law which would now be taken. And if circumstances similar to those which existed in *R. v. St. Mary-the-Less, Durham* (*n*), were to arise again, it might possibly be said that the use of a kitchen cut off from the rest of the house amounted to a separate occupation, and (if the rest of the house were absolutely (*o*) unused) the rate could not be made upon the whole.

Where a building is "occupied" only in the sense that the owner stores therein furniture or machinery, of which no use is made for the time being, difficult questions arise as to the measure of value. These questions are reserved for the present (*p*), as they form part of the inquiry at what sum the occupier is to be rated, rather than of the inquiry whether there is any occupier at all.

House held by a caretaker.—We have seen that, if the owner makes no use whatever of a house, and leaves it entirely empty, he is not rateable; but that if he keeps furniture in it, he is rateable. There is another intermediate case, where the owner keeps no furniture or other chattels in the house, but keeps a caretaker residing in the house to protect the house, and there has been some conflict between the decisions of the court and the common practice in cases of this kind. One point is clear, viz., that the caretaker, who acts as the servant of the owner of the house, cannot be rated (*q*). By far the most common practice, undoubtedly,

(*l*) See *Allchurch v. Hendon Union*, [1891] 2 Q. B. 436, at pp. 441, 442, *per* Lord Esher, M.R., *infra*, p. 31.

(*m*) Such as those dealt with in *Allchurch v. Hendon Union*, *infra*, p. 31.

(*n*) (1791), 4 T. R. 477.

(*o*) If the rest of the house is used (*e.g.*) for storing furniture, such a user amounts to occupation (*vide supra*, p. 12). In practice, a person who objects to be rated for a so-called "empty" house, frequently finds that the facts, rather than the law, are against him.

(*p*) See *Staley v. Castleton* (1864), 33 L. J. M. C. 178; and the remarks thereon, *infra*, p. 160.

(*q*) *Yates v. Chorlton-on-Medlock* (1883), 47 J. P. 630; 48 L. T. 872. In this case it was held by A. L. SMITH, J., that the fact that the caretaker's wife and family lived with him could make no difference, and that whether they cultivated a few cabbages in the garden could be of no consequence. The question, who is the occupier, as between employer and employed, is further considered, *infra*, pp. 21—23.

is not to attempt to rate either owner or caretaker of a house which is to let. But in *Hicks v. Dunstable* (r) a caretaker was paid 2s. 6d. a week to live in a house which was to let. He cultivated and was entitled to the benefit of the produce of the garden, greenhouse and paddock. Part of the produce was consumed by the caretaker and his family, and part of the flowers and vegetables (without the knowledge of the owner) was sold, and the herbage of the paddock (also without his knowledge) was let to a butcher. It was held that the owner was liable to be rated, on the ground that property capable of beneficial occupation was rateable; that somebody occupied; and that the master, and not the caretaker, was rateable (s).

It is submitted that, in this case, sufficient attention was not paid to the fact that great part of the profitable use made of the premises was made without the knowledge of the owner. If the owner of unenclosed land does not use it, or occupy it in any way, he is not rateable, and it is clear that he does not become rateable if a trespasser, without his knowledge, enters on the land to cut turf, or dig gravel or stone (t). It is submitted that in *Hicks v. Dunstable* (u), the sale of fruit and vegetables, and the letting of the herbage of the paddock, without the knowledge of the owner, could not make the owner rateable, if he was not so otherwise. The use of the garden by the caretaker, with the permission of the owner, was no doubt taken into account in fixing the wages paid, and was, in effect, a payment of wages in kind. It may, however, be said that the effect of the caretaker's use of the garden, with the permission of the owner, is to make the owner occupier of the premises by his servant. The question then remains, whether the occupation is such a "beneficial occupation" as to be rateable, or whether the occupation (though rateable) is rateable at nothing.

Where the owner of a house, besides putting in a caretaker, leaves furniture there, he is rateable because of the use thus made of the house apart from the question of occupation by the caretaker (x).

(r) (1883), 48 J. P. 326.

(s) Previously to this decision, it had been held in two Irish cases, that the owner of houses which are to be let is not rateable, whether a caretaker resides there or not: see *North Dublin Union v. Scott* (1850), 1 Ir. C. L. R. 76; *Limerick Union v. White* (1852), 2 Ir. C. L. R. 630. In those cases, however, there was no profitable use of any garden or paddock.

(t) In *Crother Smith v. New Forest Union*, Ryde's Rat. App. (1886—1890), 311, the owner of building land was held not rateable although (without his knowledge) another person had used the land by turning cattle upon it.

(u) (1883), 48 J. P. 326.

(x) *Bursledon v. Clarke* (1897), 61 J. P. 261. Compare the decision of the London quarter sessions in *Marquis de Santurce v. St. George's Union*, Ryde's Rat. App. (1886—1890), 207.

Ownership of land over which the public have rights.—

Many instances may arise where the ownership of property is vested in a person, or in a public authority, subject to the use of the property by the public generally. The owner of land dedicated to the public as a highway is not rateable for it, because there is no occupier of the land (*y*). This proposition has never been disputed, but questions have been raised where property has been vested in a public body, to be maintained by them, but for the use of the public at large. Thus in *Hare v. Overseers of Putney* (*z*), Putney Bridge (which had previously been a toll bridge) was purchased by the Metropolitan Board of Works (who received an annual payment from the justices of Middlesex and Surrey in discharge of the liability of those counties to repair county bridges), and the bridge was thrown open to the public, free of toll. It was held that the Metropolitan Board of Works were not occupiers of the bridge. BRAMWELL, L.J., said (*a*): "No doubt the property is in them, and the property draws to it the possession. An action of trespass to the bridge would have to be brought by them, but that does not make them occupiers so as to be liable to be rated." And BRETT, L.J., said (*b*):

"They are no more the occupiers of the bridge than the owner of a street is the occupier of a street after it has been dedicated to the public. It seems to me that the Metropolitan Board of Works have no power to do anything to or on the bridge except keep it up for the benefit of the public. The public have a right to use the whole of the bridge, and have not merely a right of way across it. The whole bridge is to be kept up for the use and benefit of the public."

This decision was approved, and the principle of it was (at first sight at least) carried further by the House of Lords in the *Brockwell Park Case*, *Lambeth Overseers v. London County Council* (*c*). There a special Act provided that the London County Council might purchase a park, and should maintain it for perpetual use by the public for exercise and recreation; the Act authorised the council to enclose the lands or any part thereof, "with a view to the better or more effectual preservation thereof for public use"; to erect and maintain huts and lodges for the accommodation of keepers and constables, and also such other buildings as the council might think requisite for refreshment rooms, band-stands, etc. These powers were exercised, and the park with the buildings was maintained by the county council. All the land in the park (excluding the houses) was open to the public at large during the daytime, but at night the gates were locked and the public not admitted; but this was stated to be

(*y*) *Vide per* Lord HALSBURY, *Lambeth Overseers v. London County Council*, [1897] A. C. 625, at p. 630, *infra*, p. 18.

(*z*) (1881), 7 Q. B. D. 223.

(*b*) 7 Q. B. D., at p. 233.

(*a*) 7 Q. B. D., at p. 231.

(*c*) [1897] A. C. 625.

"necessary for the protection of the park, and to prevent it being turned to improper uses at night." It was held that the county council were not occupiers (*d*). Lord HALSBURY, L.C., said (*e*) :

"I do not think there is here a rateable occupation by anybody. The public is not a rateable occupier, and I think that one sentence disposes of the case. I think the *Putney Bridge Case* (*f*) is expressly in point, and I can draw no distinction between an artificial structure with a road over it for the use of the public, and a park for the like purpose of allowing the public to go into it and use it. I think the *Putney Bridge Case* was rightly decided, and I think it is strictly in point in this case. The fact that the park is vested in the county council does not make them the occupiers. It would be absurd to contend that wherever the legal estate is, there is occupation. A road is vested in some one, but, if a public road, there is no occupation of it any more than of a milestone or a direction post."

It must be noticed that in the *Putney Bridge Case*, the bridge was open to the public at all times of the day and night, whereas in the *Brockwell Park Case*, the public were excluded from the park at night, and were excluded from the dwelling-houses of the keepers and constables in the park at all times. It may be suggested that the ownership of the park by the county council, coupled with the exclusion from the park at night of all persons other than the servants of the council, was sufficient to make the county council occupiers of the park, subject to the easement or right of entry during the day. It must, however, be noticed that the gates were locked at night in the interests of the public, and not in the interest of the county council: they were locked to protect the park for the public, and to preserve public order, and in locking them, the county council acted merely "as custodians and trustees for the use of the public" (*g*). The case is therefore clearly distinguishable from the case of an owner and occupier of land used as a private road, who allows the public to use the road at stated times, and at other times excludes them. In such a case the exclusion is in the interests of the landowner and against the interests of the public.

As to the dwelling-houses in Brockwell Park for the park-keepers, some difficulty may be felt on the ground that, if the county council had provided houses for the keepers outside the park in an adjoining street, either the council or the keepers would, apparently, have been rateable. But Lord HALSBURY

(*d*) The question whether, assuming them to be occupiers, they had such a "beneficial occupation" as to be rateable, is considered, *infra*, p. 146.

(*e*) [1897] A. C., at p. 629.

(*f*) *Harc v. Overseers of Putney* (1881), 7 Q. B. D. 223, *supra*, p. 17.

(*g*) *Vide per* Lord HERSCHELL, [1897] A. C., at p. 632. If Putney Bridge had been a swing bridge, closed to the public at night (so as not to interfere with the navigation of the river), and left in charge of a watchman employed by the Board of Works, it would have been hardly possible to contend that the Board were in occupation of the bridge. The case would then have been closely analogous to that of Brockwell Park.

said (*h*), "The house and refreshment rooms are, and must remain, part of the park, and are no more capable [of], or in fact subject to, different consideration than the park itself."

Permanence of occupation not necessary.—The question whether the person in actual possession is the rateable occupier does not depend upon the question whether the possession is for any fixed term, or is merely at the will of the owner. Thus in *R. v. Munday* (*i*), the residents in almshouses were appointed for life, subject to a liability to be removed for breach of the regulations of the trustees. It was held that the residents were rateable as occupiers. This decision was followed in *R. v. Green* (*k*), when the occupants of almshouses were held rateable as occupiers, even though they were removable at the pleasure of the patrons of the charity.

In *R. v. Fuller* (*l*) it was doubted whether, if the owner of a stable "lent" it to his friend, the latter would be rateable. It is submitted that he would be if the whole stable were lent to him, but not if he merely used one stall out of many, like a lodger using one room only while the remainder of the hereditament was occupied by the owner. In *R. v. Aberystwith* (*m*), the owner of a house was held rateable as the occupier of it, though during his absence his friends had been allowed to reside in it, the garden being cultivated at the owner's expense during the same period. But in *R. v. Ponsonby* (*n*) persons occupying rooms in Hampton Court Palace by permission of the Crown were held rateable, and BLACKBURN, J., said that if the owner of a house went abroad, and allowed a friend to use the house in his absence, the friend, and not the owner, would be rateable.

It will be seen (*o*) that the nature of the title of the person alleged to be in occupation may, in some cases, have to be considered where the actual possession is not clearly proved. But where actual possession exists, a tenant at will is, until the will be determined, an occupier of land (*p*). Thus, in *Electric Telegraph Co. v. Salford* (*q*), the telegraph company had fixed posts by the side of a railway, and the railway company had the right to direct their removal if they interfered with the working of the railway. It was held that the telegraph company were, notwithstanding, rateable as occupiers of land, and MARTIN, B., speaking of the

(*h*) [1897] A. C., at p. 631.

(*i*) (1801), 1 East, 584.

(*k*) (1829), 9 B. & C. 203.

(*l*) (1855), 8 E. & B. 365 n.

(*m*) (1808), 10 East, 354, *supra*, p. 14.

(*n*) (1842), 3 Q. B. 14, at p. 27.

(*o*) *Vide infra*, p. 51.

(*p*) See *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156, at p. 169, *infra*, p. 265.

(*q*) (1855), 11 Ex. 181, at p. 189, *infra*, p. 374. A similar decision was given as to the pipes of a water company, which the highway authority had the right to move, in *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705; 21 L. J. M. C. 174, *infra*, p. 267.

right to order the removal of the posts, said, "That only shows that the telegraph company are strictly tenants at will of the soil occupied by them. That is no objection to the rate."

In *R. v. St. Pancras (r)*, MELLOR, J., said: "I agree with the opinion cited by Lord HATHERLEY, in *Cory v. Bristow (s)*, as that of Lord CAMPBELL, C.J., in the case of *Forrest v. Overseers of Greenwich (t)*, viz., that in order to be rateable the occupation must be permanent in its nature." In order to see the effect of the judgment of MELLOR, J. (and of LUSH, J., who agreed with him), and how far those judgments are supported by the authorities cited, it may be convenient to take them in chronological order. In *Forrest v. Overseers of Greenwich (t)* it was held that a floating pier (which grounded at every low tide at a fixed place in the river) was rateable, and Lord CAMPBELL, C.J., said: "In the case now before us there is a permanent and profitable occupation of the soil within the parish of the respondents [the overseers], who are therefore entitled to our judgment." But the sentence was inserted in order to distinguish the case from *R. v. Morrison (u)*, in which (said Lord CAMPBELL) "we held a floating dock not rateable, but for the reason that it had no fixed locality, that it actually was shifted about from place to place." When contrasted with this finding, the word "permanent" appears to signify continuous, as opposed to intermittent, physical possession of the soil; it does not signify that an occupation, in order to be rateable, must be for a long term. And it is in this sense that Lord HATHERLEY, in *Cory v. Bristow (r)*, seems to have understood the passage: for after citing it with approval, he proceeds to hold that exclusive possession of land is rateable, though it may be liable to determination on a week's notice; and adds "it would be a confusion of ideas to say that it [*i.e.*, the liability to determination] interferes with the exclusive possession any more than a right of re-entry on the part of a landlord in certain given events could be said to interfere in any way with the right of a tenant during the time he is holding. He is in beneficial occupation for a term, though that term is limited by certain contingencies which may possibly determine his interest at an earlier period." It is submitted that if this part of Lord HATHERLEY's judgment be remembered, it becomes clear that it can only be reconciled with the decision of MELLOR and LUSH, JJ., in *R. v. St. Pancras (y)*, that "permanence" is an essential element in occupation, by understanding that word as contrasted with temporary, or intermittent

(r) (1877), 2 Q. B. D. 581; *vide supra*, p. 10, where further extracts are given.

(s) (1877), 2 App. Cas. 262, at p. 275.

(t) (1858), 8 E. & B. 890, at p. 900.

(u) (1852), 1 E. & B. 150.

(x) (1877), 2 App. Cas. 262, at pp. 275, 276.

(y) (1877), 2 Q. B. D. 581, *supra*, p. 10.

possession. A builder who rented a yard as a standing place for carts, and for the storage of building materials, would be rateable, even if he took it only for a short term. On the other hand, if he used a piece of land as a means of access to an adjoining building, and as a place where his carts could stand while building materials were being unloaded for use on that building, he would probably not be held rateable, unless he became tenant of the lands used. Again, in dealing with cases where rateability is made to depend on physical attachment to the soil, the object of the attachment may be looked at. The dropping of an anchor by a ship would not amount to an occupation of land even though it might be firmly embedded in the soil; the placing of an anchor to carry the strain of a suspension bridge would amount to occupation (z). In the latter case the anchor would be part of the land; in the former case it would not. In the latter case the annexation might be said to be "permanent" (even though the bridge was intended to be merely temporary); in the former case it could not. Taken in this sense, "permanence" may perhaps be said to be an essential element in rateable occupation.

The "occupation" of a servant or agent.—Although, as we have seen (a), there must be actual possession to constitute occupation, it does not follow that the person in visible actual possession is the rateable occupier: for if he be a servant, or agent, in possession on behalf of his master or employer, the occupation is the occupation of the master or employer (b). Thus in *Yates v. Chorlton-on-Medlock* (c), a caretaker in charge of an empty house was held not to be rateable. And in *R. v. Field* (d), the appellant was employed by a philanthropic society as matron in charge of a charity school, and was provided with a dwelling in the school, free of rent, taxes, etc. It was held that she was not the occupier. And in *R. v. Tynemouth* (e), where a servant was employed at an annual salary to reside in two rooms in a lighthouse and take care of the light, it was held that the occupation was that of the master by his servant, not that of the servant himself. But in *R. v. Catt* (f), where the master of a charity school was provided with a separate house and garden, it was held

(z) *Vide per* BLACKBURN, J.: *Holland v. Hodgson* (1872), L. R. 7 C. P. 328, *infra*, Chapter XXV.

(a) *Vide supra*, p. 11.

(b) See *R. v. Stock* (1810), 2 Taunt. 339; *Bertie v. Beaumont* (1812), 16 East, 33. Whether, in the latter case, the general rule was correctly applied to the particular facts, may be doubted. See *Smith v. Seghill* (1875), L. R. 10 Q. B. 422, *infra*, p. 25.

(c) (1883), 47 J. P. 630; 48 L. T. 872. See further as to houses in charge of a caretaker, *supra*, pp. 15, 16, and *R. v. Simmons*, Ryde's Rat. App. (1891—1893), 316, *infra*, Chapter XXXI.

(d) (1794), 5 T. R. 587.

(e) (1810), 12 East, 46. As to the rateability of the master, see *infra*, p. 328.

(f) (1795) 6 T. R. 332.

that he was rateable as occupier. In *Eyre v. Smallpace* (g), it was held that the controller of Chelsea Hospital was rateable as occupier of the apartments which he held by virtue of his office (h).

Many cases have been decided with reference to the rating of premises used by the servants of the Crown. There additional importance attaches to the question whether the servant of the Crown is himself personally in occupation, because the Crown cannot be rated; and therefore, if it can be shown that the Crown is in occupation, there is no occupier who can be rated. But these cases which deal with the extent of the exemption attaching to Crown property may be more conveniently dealt with hereafter (i).

The question whether a servant or his master is to be rated for premises visibly and actually used by the servant, appears, from the cases referred to above, to depend upon two considerations, viz. (1) whether the premises for which it is sought to rate the servant are comprised in and an integral part of larger premises which constitute one single rateable hereditament occupied by the master, in which case the master must of course be rated (if anybody is to be rated) for the whole; and (2) whether the use which is made of the premises by the servant is in the interests of the master or of the servant. In *R. v. Catt* (k), the schoolmaster had a separate house assigned to him: he was the sole occupier of it, and was therefore rateable. In *R. v. Field* (l), the schoolmistress had a private room in the school buildings, which (as a whole) were in the occupation of the philanthropic society: the schoolmistress was therefore not rateable. Again, in *R. v. Tynemouth* (m), residence in the lighthouse to take care of the light was part of the work which the keeper was employed to do on behalf of his master, who received the tolls paid for the use of the light. But in *R. v. Catt* (n), the residence of the schoolmaster in the house provided for him was not part of the work which he was employed to do, but represented part of the remuneration for that work. The lighthouse keeper was held not rateable; the schoolmaster was held rateable.

In dealing with a dwelling-house, which is a separate rateable hereditament, the rule may perhaps be stated thus: If the master provides a house for his servant merely because he employs a servant who must have a house, then the servant is rateable; but

(g) (1750), 2 Burr. 1060, where the effect of the decision is very briefly recorded in the statement of the arguments in *R. v. St. Luke's*.

(h) Cf. *Neave v. Weather* (1842), 3 Q. B. 984; *Tracy v. Taylor* (1842), 3 Q. B. 966.

(i) See Chapter VII., *infra*, pp. 97—100. And see specially *R. v. Hurdiss* (1789), 3 T. R. 497; *R. v. Terrott* (1803), 3 East, 506; *Martin v. West Derby* (1883), 11 Q. B. D. 145; *Showers v. Chelmsford Union*, [1891] 1 Q. B. 339; Ryde's Rat. App. (1891—1893), 259; *Cross v. West Derby Union*, [1899] 16 T. L. R. 120.

(k) (1795), 6 T. R. 332, *supra*, p. 21.

(l) (1794), 5 T. R. 587, *supra*, p. 21. (m) (1810), 12 East, 46, *supra*, p. 21; see also *Dover v. Prosser*, [1904] 1 K. B. 84; 20 T. L. R. 49.

(n) (1795), 6 T. R. 332, *supra*, p. 21.

if the master employs the servant to live in the house because the master wants somebody to live there, then the master is rateable (o).

In *R. v. Lynn* (p), the appellant, who was a clerk to a firm of brewers, lived in a house taken by himself, but for which his employers paid the rent and rates. The house was a quarter of a mile from the brewery, and, according to the cases cited above, the appellant would have been clearly the right person to be rated as the occupier but for the fact that the employers had the right, under their agreement with the appellant, to send another clerk to lodge in the house. It was held that this right made no difference, because the appellant had dominion over the whole house, and that he (and not the employers) was in occupation.

Analogy of decisions as to the franchise.—The distinctions above referred to may be illustrated by a comparison with cases decided as to the qualification of voters as “inhabitant occupiers,” as “lodgers,” or under “the service franchise” (q). But the franchise cases are not all strictly in point. Cases in which the question was whether the person claiming the vote occupied as a tenant, or was a mere servant, seem to turn precisely on the same tests as would determine whether he was a rateable occupier or not. Again, the cases which determined whether the claimant was qualified as the inhabitant occupier of a dwelling-house, or as a lodger merely, would also determine the question of liability to poor rate. But cases relating to the “service franchise” must (it is submitted) be read subject to the following considerations. Before the creation of the “service franchise,” the claim to a vote might be defeated by showing either (1) that the claimant held the qualifying property as a servant merely, in which case the occupation was in law the occupation of his master; or (2) that the qualifying property was part only of a larger hereditament, and was not separately occupied (r), inasmuch as the landlord retained the general control over the whole building. The claim to the “service franchise” cannot (in most cases) be defeated on the first ground (s), the objection being met by the section creating the franchise. But it appears doubtful whether, in some of the cases at least, the “service franchise” has

(o) The rule thus stated is perhaps not reconcilable with *Bertie v. Beaumont* (1812), 16 East, 33, and *R. v. Chesnut* (1818), 1 B. & Ald. 473; but it is submitted that those cases are not consistent with *Marsh v. Estcourt*, [1889] 24 Q. B. D. 147; *Dover v. Prosser*, [1904] 1 K. B. 84; 20 T. L. R. 49; *Smith v. Seghill* (1875), L. R. 10 Q. B. 422, *infra*, p. 25, and the group of cases thereby confirmed which support the rule suggested in the text. Compare also *Nie v. Nottingham JJ.*, [1899] 2 Q. B. 294.

(p) (1838), 8 A. & E. 379.

(q) The franchise as an occupier inhabiting a dwelling-house “by virtue of any office, service, or employment,” under the Representation of the People Act, 1884 (48 & 49-Vict. c. 3), s. 3.

(r) See the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5.

(s) See *Adams v. Ford* (1885), 16 Q. B. D. 239; *Atkins v. Collard* (1885), 16 Q. B. D. 254; *Ballingal v. Menzies*, W. N. (1897) 95; *Colquhoun v. Young*, W. N. (1898) 114.

not been given to claimants in respect of qualifying property which, for the purposes of poor rate, would be treated as part of a larger hereditament, and would, therefore, not be separately rated (*t*).

In *Hughes v. Chatham (u)*, a master ropemaker in Chatham dockyard was provided with a house rent free, as part of his salary; it was not shown that he was required to occupy the house in order to perform his service, or that his occupation was conducive to the performance of it. It was held that he occupied the house as tenant within the Representation of the People Act, 1832 (2 Will. 4, c. 45), s. 27, and not as a servant, and was therefore entitled to a vote (*x*). But in *Dobson v. Jones (y)*, the surgeon of Greenwich Hospital was provided with a house belonging to the Admiralty, and was required to reside there, not being allowed to alter his residence without the permission of the Admiralty, although if he had not been provided with a house he would have been allowed extra pay for lodging money. It was held that he did not occupy the house as "tenant," and was not entitled to a vote. These two cases were approved in *Fox v. Dalby (z)*, in which case a sergeant of militia lived in a house assigned to him, close to the storehouse for arms, etc., and built expressly for the accommodation of men looking after the stores. He could not leave the house without permission of the commanding officer; but he could perform his duties equally well if he were living elsewhere, which he could do with permission of the commanding officer. It was held that he was not occupying the house "as tenant" within s. 3 of the Representation of the People Act, 1867 (*a*), and was not entitled to a vote. BRETT, J., stated the effect of the cases thus (*b*):

"Where a person is permitted (allowed if so minded) to occupy premises by way of reward for his services, or as part payment, his occupation is that of tenant; but where he is required to occupy them for the better performance of his duties, though his residence there is not necessary for that purpose, or if his residence there be necessary for the performance of his duties, though not specifically required, his occupation is not that of tenant."

These decisions were shortly afterwards approved and applied to a rating case in *Smith v. Seghill (c)*. There the appellant was a collier, residing in a house belonging to his employers, for which he paid no rent; he was not entitled to any notice to quit, and

(*t*) See *Adams v. Ford* (1885), 16 Q. B. D. 239; *Stribbling v. Halse* (1885), 16 Q. B. D. 246. Some doubt has been thrown upon the latter case in *Barnett v. Hickmott*, [1895] 1 Q. B. 691, and in *Clutterbuck v. Taylor*, [1896] 1 Q. B. 395; but see also *Wallace v. Borrie*, W. N. (1898) 113.

(*u*) (1843), 5 M. & G. 54.

(*x*) A similar decision, as to agricultural labourers, who were permitted (but not required) to live in cottages belonging to the farmers employing them, will be found in *Marsh v. Estcourt* (1889), 24 Q. B. D. 147; see also *Dover v. Prosser*, [1904] 1 K. B. 84; 20 T. L. R. 49.

(*y*) (1844), 5 M. & G. 112. The case was decided before the creation of the "service franchise."

(*z*) (1874), L. R. 10 C. P. 285.

(*a*) 30 & 31 Vict. c. 102.

(*b*) L. R. 10 C. P., at p. 295.

(*c*) (1875), L. R. 10 Q. B. 422.

the occupation of the house would cease when his service ceased. The employers had several houses, which they filled up with workmen in their discretion. If a house was vacant the owners could call upon a workman to go into it. It was not absolutely necessary for the workman to live in one of the employers' houses to perform his work. It was held that the appellant was an occupier within the meaning of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), and was entitled to be entered as such in the rate-book; and this notwithstanding the fact that the colliery owners required their married workmen to reside in their houses near the works. MELLOR, J., said (*dl*) :

"That does not change the relation between the parties. Unless the men are required to live in the houses for the better performance of their duties, it does not convert the occupation of a tenant into that of a servant (*dd*). The governing principle is that, in order to constitute an occupation as a servant, it must be an occupation ancillary to the performance of the duties which the occupier has engaged to perform."

A married man living with his wife in a house belonging to her may be entitled to a vote as tenant of the house, if he pays a rent to his wife, but not otherwise (*ee*).

Analogy of decisions as to inhabited house duty.—For some purposes (*e*) the decisions relating to liability to inhabited house duty seem not to be in point; but on the question whether the person in possession of an undivided dwelling-house is to be regarded as the "occupier," or as a servant acting on behalf of the "occupier," the cases seem to depend on the same considerations as the decisions relating to the poor rate (*f*).

In *Clifton College v. Thompson* (*g*), the headmaster of Clifton College resided in, and received boys as boarders in a house belonging to the college, and held by the headmaster under a lease which would determine if he ceased to hold the office of headmaster, though he was not bound to reside in the house. It was held that the headmaster, and not the college, was chargeable as the occupier of the house.

This decision was followed in *Charterhouse School v. Gayler* (*h*), in which the headmaster paid no rent for his dwelling-house, but was bound by the terms of his appointment to reside there, and

(*d*) L. R. 10 Q. B., at p. 429.

(*dd*) See also *Dover v. Prosser*, [1904] 1 K. B. 84; 20 T. L. R. 49.

(*ee*) *Pearce v. Merriman*, [1904] 1 K. B. 80; 20 T. L. R. 48; *Hall v. Michelmore*, [1902] 86 L. T. 17.

(*e*) For example, upon the question whether the several floors of a building let to different persons are to be taxed as one or more hereditaments. Cf. *R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, *infra*, p. 29, with *Att.-Gen. v. Mutual Tontine Westminster Chambers Association* (1876), 1 Ex. D. 469.

(*f*) Under 48 Geo. 3, c. 55, Sched. B., r. 1, the duty is charged on the "occupier."

(*g*) [1896] 1 Q. B. 432.

(*h*) [1896] 1 Q. B. 437.

took in boarders. It was held (though not without doubt) that the headmaster was liable to inhabited house duty as the occupier of the house, and that the Crown was wrong in assessing the governing body of the school. WRIGHT, J., said (i) :

“It is true the headmaster has to reside there, and that is a very strong fact in favour of the Crown. He pays no rent,—that is not material, except as evidence; he does not do the repairs,—that is not material, except as evidence; the governors have a right to come in and do the repairs, and that again is consistent with his being the occupier (k); but he lives there as any other person lives there; and what to us, for the purpose of to-day, seems to be the turning point, is, that he occupies the building for the purpose of keeping boarders there for his own profit.”

It is submitted that the two cases above cited, had they dealt with the question of liability to poor rate instead of inhabited house duty, would have been decided the same way, and may be usefully referred to for the purposes of this volume.

Occupation distinguished from the tenancy of a lodger.—An examination of the cases will show that a mere “lodger” (using that word in its popular sense) is not rateable, while the tenant of a flat (speaking generally) is rateable (l). The reason is that, although a “lodger” may be said in common language to “occupy” a room, the tenancy of a “lodger” generally does not—while the tenancy of a “flat” generally does—amount to what the law regards as “occupation,” in the sense in which that word is used in connection with rating. A lodger’s rooms, like a “flat,” constitute part of a larger building; but the tenant of the lodgings (in most cases) holds subject to the general control of landlord over the whole building, including the rooms let to the lodger, while the tenant of a flat is (in most cases) free from that control. It will be found that the distinction between a lodger, who is not rateable, and an independent tenant, who is rateable, is based on a principle which applies to many classes of hereditaments very different from dwelling-houses. The general principle appears to be that where the occupier of a hereditament lets part of that hereditament to a tenant, the occupier remains rateable for the whole, if he retains a general control over the part so let, by retaining the control over the access thereto or otherwise; but if he parts with that control, then the part which is let becomes a separate rateable hereditament for which the tenant is rateable as the occupier (m). And by “control” is here meant a control which

(i) [1896] 1 Q. B. 444.

(k) See the remarks, *infra*, p. 229, on *Leeds, Bradford and Halifax Rail. Co. v. Armley* (1861), 25 J. P. 711.

(l) See *Bradley v. Baylis* (1881), 8 Q. B. D. 195, *infra*, p. 27; *R. v. St. George’s Union* (1871), L. R. 7 Q. B. 90; Ryde’s Met. Rat. App. 82, *infra*, p. 29.

(m) See *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852; Ryde and Konstan’s Rat. App. (1894—1904), 143; and the other cases collected, *infra*, pp. 32—39.

is exercised during the continuance of the tenancy, and not merely a right to terminate the tenancy, and to call upon the tenant to remove on short notice or without notice at all. A tenant in full occupation is rateable, even though he be a tenant at will (*n*). The right to say *how* a tenant shall use the landlord's property is clearly distinguishable from the right to say *how long* he shall use it. The latter right does not alter the nature of the user as long as it lasts (*o*).

The distinction between a "lodger" and an independent occupier has been the subject of many cases decided with reference to the parliamentary franchise, and the distinction made in those cases seems to be precisely the same as that made for the purposes of rating (*p*).

The leading case on the distinction between a lodger and an occupier is *Bradley v. Baylis* (*q*), decided with reference to the Parliamentary and Municipal Registration Act, 1878 (*r*), in which JESSEL, M.R., thus illustrated the distinction between a lodger and an occupying tenant (*s*):

"Where the owner of a house does not let the whole of it, but retains a part for his own residence, and resides there, and where he does not let out the passages, staircase, and outer door, but gives to the 'inmates' (I use that term for my present purpose) merely a right of ingress and egress, and retains to himself the general control, with the right of interfering—I do not mean actual interference, but a right to interfere—a right to turn out trespassers, and so on; there I consider that such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a lodger. That is one extreme case.

"Now I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress and egress over the lower passages, but parts entirely with the whole legal ownership, for the term demised, and retains no control over the house; there, in my opinion, the inmates are occupying tenants and are capable of being rated as such. That is an extreme case on the other side.

"There will be an immense number of intermediate cases, which can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door? I think not. I think they are still lodgers notwithstanding. Does it make any difference that the landlord does not reside there personally, but has resident servants who occupy on his behalf part of the house? I think not (*t*). I think that the

(*n*) *Vide supra*, p. 19.

(*o*) Compare *Cory v. Bristow* (1877), 2 App. Cas. 262, at pp. 275, 276, *supra*, p. 20.

(*p*) Cases decided with reference to the "service franchise" must be distinguished, *vide supra*, p. 23.

(*q*) (1881), 8 Q. B. D. 195. The case is founded on the same principle as the *Westminster Chambers Case*, *R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, *infra*, p. 29, where the tenant of a flat was held to be rateable.

(*r*) 41 & 42 Vict. c. 26, s. 5.

(*s*) See 8 Q. B. D., at pp. 219, 220.

(*t*) *Cf. R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, *infra*, p. 29.

inmates are still lodgers. Does it make any difference that the landlord does or does not repair? (*u*). I think not; they are still lodgers.

“On the other hand, suppose a landlord does not demise the whole of the house, but everything in it that can be demised except the staircases and passages, etc., as to which he gives the inmates the right of ingress and egress, but exercises no control over, and does not reside in the house, I think the inmates are occupying tenants. Here, again, does the fact of the landlord repairing or paying rates and taxes make any difference? I think not. Of course he has a right to enter to make such repairs, but still, in my opinion, that does not prevent the occupier being in rateable occupation.”

Where a landlord lets out the whole of a house to different tenants, reserving no actual control over it, if one tenant leaves, and the landlord is thereby made to resume control over the unlet part, the other tenants do not, in consequence, become lodgers, unless the owner resumes full control, as if he comes to reside in the vacated rooms (*x*).

This decision in *Bradley v. Baylis* (*y*) agrees with *Stamper v. Overseers of Sunderland* (*z*), in which the owner of a house let out all the rooms in it to different tenants, and did not himself occupy any part of the house, or retain any control over it. It was held that under the statute, 43 Eliz. c. 2, each tenant was rateable as the occupier of the room let to him.

The distinction between a lodger and an occupier was thus stated by BLACKBURN, J., in *Allan v. Liverpool* (*a*) :

“The poor rate is a rate imposed by the statute on the occupier, and that occupier must be the exclusive occupier, a person who, if there was a trespass committed on the premises, would be the person to bring an action of trespass for it. A lodger in a house, although he has the exclusive use of rooms in the house, in the sense that nobody else is to be there, and though his goods are stowed there, yet he is not in exclusive occupation in that sense, because the landlord is there for the purpose of being able, as landlords commonly do in the case of lodgings, to have his own servants to look after the house and the furniture, and has retained to himself the occupation, though he has agreed to give the exclusive enjoyment of the occupation to the lodger (*b*). Such a lodger could not bring ejectment or trespass *quare clausum fregit*, the maintenance of the action depending on the possession; and he is not rateable.”

Part of a house underlet for offices.—In *R. v. Smith* (*c*), the tenant of a house sublet five rooms therein to the Board of

(*u*) See the remarks, *infra*, p. 229, on *Leeds, Bradford, and Halifax Rail. Co. v. Arnley* (1861), 25 J. P. 711.

(*x*) *Anketill v. Baylis* (1882), 10 Q. B. D. 577; overruling the dictum of BRETT, L.J., in *Bradley v. Baylis* (1881), 8 Q. B. D. 195, at pp. 235, 236.

(*y*) (1881), 8 Q. B. D. 195, *supra*, p. 27.

(*z*) (1868), L. R. 3 C. P. 388.

(*a*) (1874), L. R. 9 Q. B. 180, at p. 192.

(*b*) Compare the distinction drawn between “exclusive occupation” and “exclusive enjoyment” in *Smith v. Lambeth* (1882), 10 Q. B. D. 327, at p. 330, *infra*, p. 37.

(*c*) (1860), 30 L. J. M. C. 74; *S. C. sub nom. Smith v. St. Michael's, Cambridge*, 3 E. & E. 383.

Inland Revenue, under an agreement whereby he was to provide gas, wood, coals, and a person "to reside on the premises, to keep clean, light fires, and attend to the same." The agreement used the terms "rent" and "possession to be given." It was held that the tenant of the whole house was rightly rated as the occupier of the whole. HILL, J., said (*d*) :

"There is no doubt that exclusive possession of a part only of a house may be given, so as, in effect, to make the two parts of the house separate tenements: the question in the present case was whether such possession had been given; and we are of opinion it had not. . . . We think that we must look not so much to the words, as to the substance of the agreement (*e*); and taking the whole together, we think it must be construed, not as a demise of the five rooms, but as an agreement, by which the appellant, retaining possession of these rooms and keeping his servant there, bound himself to supply the other party there with fire and gas, and attendance. It is true that the exclusive enjoyment (*f*) of the rooms is to be given; but that is the case where a guest in an inn, or a lodger in a house, has a separate apartment, or where a passenger in a ship has a separate cabin; in which case, it is clear that the possession remains in the innkeeper, lodging-house keeper, or shipowner."

The tenant of a flat distinguished from a lodger.—The leading case with reference to the rateability of the tenant (*g*) of a "flat," is the *Westminster Chambers Case* (*h*), the facts of which would be very similar to those affecting most flats; but as each case must depend upon its own circumstances, it may be as well to state the facts.

The Westminster Chambers consisted of seven blocks of buildings, having seven principal entrances and seven separate staircases. The blocks were structurally divided into 117 different sets of rooms, each having an outer door opening on to one of the staircases, and an inner hall or passage. The street door was kept locked at night, and a porter, who was hired by the lessors, resided in a distinct set of rooms in the basement of each block, and had a key of and access to the sets of rooms in such block "for the purpose of a general superintendence, and as the servant of the occupiers respectively, by whom he was in some cases employed and paid for looking after the rooms." The lessors provided gas for the staircases, water for the entire building, and paid all rates and taxes. Each set of rooms was "let" for a certain time, at a fixed rent, under an agreement containing a covenant by the

(*d*) 30 L. J. M. C., at p. 76.

(*e*) Compare the judgments of LOPES, L.J., in *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, at p. 858; *infra*, p. 34; and of BLACKBURN, J., in *R. v. St. George's Union*, L. R. 7 Q. B., at p. 101, *infra*, p. 30, note (*k*).

(*f*) Compare the distinction between "exclusive enjoyment" and "exclusive occupation" in *Smith v. Lambeth* (1882), 10 Q. B. D. 327, *infra*, p. 37.

(*g*) A contract between the landlord and the tenant, whereby the former undertakes to pay rates, does not affect the tenant's liability, as between him and the rating authority.

(*h*) *R. v. St. George's Union* (1871), L. R. 7 Q. B. 90; Ryde's Met. Rat. App. 82.

lessors to pay the rates, and a covenant by the lessees to repair internally, with a power to the lessors to enter to paint externally, and to inspect the condition and use made of the premises, and a proviso for re-entry on non-payment of rent or breach of covenant. The premises were let subject to regulations, providing (*inter alia*) that each entrance, and the rooms connected therewith, should be in the charge of a porter, appointed and removable by the lessors; that one of the duplicate keys of each set should always be in the hands of the porter; that the tenants should have the right, free of charge, to the general services of the porter, whose duty it was to be in constant attendance, to clean the staircases, to light the gas, to receive and deliver letters and parcels to the tenants, to attend to the supply of coal. It was held on these facts, that the tenant of each set was separately rateable. COCKBURN, C.J., said (*i*) :

“The question in these cases always is whether there is an occupation of a distinct and separate tenement by a person who inhabits a portion of a house or building, or whether he is merely an inmate under the landlord.

“It is necessary to establish some criterion, and it is not always, perhaps, very easy to find one; but the one which has been adopted in such cases, and which is, perhaps, the most convenient and the only one, is, whether the landlord retains the control of the outer door, and has shown by his retaining the control of the outer door that he has the control of the whole of the premises; so that, although he may be liable to an action upon the breach of his contract to allow the tenant to occupy a portion of the premises so let to the tenant, yet the tenant could not maintain trespass against the landlord, because the landlord has retained in himself the dominion and control over the whole of the house. I think the possession of the street door may be taken as a criterion, because it is only by the landlord opening and shutting the street door, or allowing it to be opened and shut for the ingress and egress of the tenant, that the tenant can have the enjoyment of the premises. If in the present case I could see that the landlords had retained the exclusive control of the outer door, so that the tenants could only come in and go out with their assent and permission, then it might be said that these persons were mere inmates or lodgers, and not the lessees of the respective tenements. In order to determine that question it is necessary to look at the agreement. I look to that and nothing else (*h*), and I see that all the characteristics of a lease and a tenancy under a lease are, as my brother BLACKBURN pointed out in the course of the argument, contained in this agreement. The landlords have not reserved to themselves directly or indirectly, expressly or by implication, any right to go into the apartments of any of these people. It is true that, for the common protection and common convenience of all, there is to be a porter, and the porter is to have a key of every one of these sets of apartments, in order that if the necessity should arise he may be able to get access to them. But the porter is there only for the convenience and benefit of the tenants, the occupiers of these

(*i*) L. R. 7 Q. B., at p. 97.

(*h*) But in the same case, BLACKBURN, J. (L. R. 7 Q. B., at p. 101), stated the true test to be, upon the construction of the document, to look “not so much to the words as to the substance.” And in *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, at p. 858, *infra*, p. 34, LOPES, L.J., said : “It is not the words only that are to be regarded. The whole of the circumstances must be taken into consideration.” See also *R. v. Smith* (1860), 30 L. J. M. C. 74, *supra*, p. 29.

separate and distinct sets of apartments, and he is not there for the purpose of securing to the landlords the entire control over the whole of the premises so as to give the landlords the right at any time to go upon the premises without being subject to an action of trespass."

Structural severance not essential to separate occupation.—

The history of the law of rating is to some extent involved with the history of the parliamentary franchise (*l*). For the purpose of this book it may be sufficient to refer to the cases cited in the note (*m*), and to say that the doubts which at one time existed have been got rid of by legislation (*n*).

The history of the law was thus summed up by Lord Esher, M.R., in *Allchurch v. Hendon Union* (*o*) :

"The phrase 'structural severance' is not a phrase which has anything to do with occupation at all. It was a phrase invented by the judges at a time when in the statute of Elizabeth and in the Franchise Acts they were labouring to determine what was to be an occupation which in one case would give a liability to be rated, and in the other the right to the franchise. It was in use for a long time, and it had so far got into use that the legislature was obliged to deal with it, and the legislature has dealt with it, and has, in fact, done away with it, and has determined that when dealing with occupation as the foundation either for a right or for a liability, you must look to the occupation and see what it is that is occupied. . . . I say distinctly this whole matter of structural separation is an exploded phrase, and an exploded doctrine for all purposes whatever."

In *Allchurch v. Hendon Union* (*p*) a house contained nine rooms, four on the ground floor and five on the first floor. Each floor was separately let to a tenant, who had the exclusive use of the rooms on his floor and a joint use of the back yard and closet. There was an internal staircase from the first floor to the passage, into which the front door opened, and an outside staircase from the first floor to the back yard, which communicated directly with the street. One cistern supplied water to the two kitchens on the ground floor and first floor. The landlord neither resided in nor retained any control over the house, nor rendered any services to the tenants. The ground floor tenant had the only key to the front door, and the first floor tenant had the only key of the door leading to the separate staircase. The first floor tenant usually used the back entrance by the separate staircase. It was held, that though the house was not structurally severed, each tenant had a separate occupation and was separately rateable (*q*).

(*l*) See Mackenzie and Lushington's Registration Manual (revised ed.), p. 153.

(*m*) *Thompson v. Ward* (1871), L. R. 6 C. P. 327; *Boon v. Howard* (1874), L. R. 9 C. P. 277.

(*n*) See the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 7 (2), and s. 61 : for the latter section is now substituted s. 5 of the Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26).

(*o*) [1891] 2 Q. B. 436, at pp. 441, 442.

(*p*) [1891] 2 Q. B. 436.

(*q*) A decision in the London Quarter Sessions, on facts very similar to those stated above, will be found in *Saunders v. St. Mary, Lambeth*, Ryde's Rat. App. (1891—1893), 1.

Joint occupiers distinguished from separate tenants.—It is important to distinguish the case of a building in the hands of joint occupiers from that of a building of which the parts are let separately to several persons, each of whom is the occupier of the part let to him, and of that part only. In the ordinary case of a firm occupying the whole of a building, the partners are joint occupiers of the whole and of every part of it, and each partner is liable for the rates on the whole (*r*). But in such a case as *Allchurch v. Hendon Union* (*s*), where the different parts of a building are let to different tenants, each tenant (if an occupier at all) is an occupier of his own part only, and is liable for the rates on that part only. If the whole building is rated, under one entry in the rate, as one indivisible rateable hereditament, no one tenant is liable for the rate on the whole, because he is not the occupier of the whole (*t*), nor can he be compelled to pay the rate on the part which he occupies, because there is nothing in the rate, or in the valuation list on which it is based, to show what is the value of that part.

Appropriation of part of a larger hereditament.—We have seen (*u*) that where parts of a dwelling-house are (to use an ambiguous term) underlet, the control of the outer door is generally made the criterion which determines whether the under-tenants are to be regarded as rateable occupiers or as mere lodgers; in other words, whether the tenants are respectively rateable for the separate parts, or the landlord is rateable for the house as a whole. A similar or analogous criterion has been adopted where the owner of a large hereditament has appropriated parts of it to the use of a person who occupies a position analogous to that of an under-tenant or a lodger. The cases cited below relate to such an appropriation of sheds, berths, and quay space within a system of docks (*v*); to a permission to use stables within the gates of a railway station (*y*); to a cemetery where exclusive rights of burial (*z*) or plots of land for graves (*a*) have been sold; to Messrs. W. H. Smith and Sons' bookstall in Waterloo Station (*b*); to refreshment rooms in the Exhibition of 1862 (*c*). In the

(*r*) *R. v. Papeter* (1845), 7 Q. B. 255.

(*s*) [1891] 2 Q. B. 436, *supra*, p. 31.

(*t*) *R. v. London J.J.*, [1899] 1 Q. B. 532.

(*u*) *Vide supra*, pp. 26, 30.

(*v*) *Allan v. Liverpool, Inman v. Kirkdale* (1874), L. R. 9 Q. B. 180, *infra*, p. 33; *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852; *Ryde and Konstam's Rat. App.* (1894—1904), 143; *infra*, p. 34.

(*y*) *London and North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 70, 444, *infra*, p. 35; *London and Blackwall Rail. Co. v. All Saints, Poplar* (1867), 31 J. P. 102.

(*z*) *R. v. St. Mary Abbot's* (1840), 12 A. & E. 824, *infra*, Chapter XXI.

(*a*) *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515, *infra*, Chapter XXI.

(*b*) *Smith v. Lambeth* (1882), 10 Q. B. D. 327, affirming 9 Q. B. D. 585, *infra*, p. 36.

(*c*) *R. v. Morrish* (1863), 32 L. J. M. C. 245, *infra*, p. 38.

different agreements different words will be found; but in considering whether the agreements create a separate occupation, it is the substance rather than the form that has been regarded (*d*), and the use of words which imply a separate occupation has in several cases been held not conclusive. Thus it has been held that no separate occupation was created by written agreements which used the words "occupation," "rent," and "tenancy" (*e*), or the words "occupy and use," "rent," and "possession" (*f*). On the other hand, it seems clear that a separate occupation may be created by a written agreement which not only contains no words appropriate to a demise, but even contains a proviso that it shall not operate as a lease (*g*). An express covenant by the tenant (or licensee) to pay all rates and taxes does not necessarily make him liable to be rated as occupier (*h*), though no doubt it is one of the things which have to be taken into account.

Appropriation of berths, quays, and sheds in docks.—In *Allan v. Liverpool* and *Inman v. Kirkdale* (*i*), which were heard together, the Mersey Dock Board had "appropriated to the use" of the appellants (who were shipowners) certain berths for ships, with quay space and sheds attached (all of which formed part of the system of docks belonging to the Board), on payment of a fixed charge by the appellants, "to commence from the date of their occupation," and the arrangement was to last during the pleasure of the Dock Board. Parts of the sheds were open, parts had doors, each with two locks, and when goods subject to duty were in the sheds the doors were locked at night, one key being kept by the appellants, the other at the custom house. Occasionally, when an appropriated berth was not occupied by the appellants' steamers, it was used under the direction of the dock master by other vessels, which then also used the quay space and sheds attached to the berth without payment to the appellants and without their consent. The Dock Board also exercised the right (under their special Acts) of charging a penal quay rent on goods

(*d*) *Per* LOPES, L.J., *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, at p. 858, Ryde and Konstam's Rat. App. (1894—1904), at p. 152; *infra*, p. 34; *per* BLACKBURN, J., *Allan v. Liverpool* (1874), L. R. 9 Q. B. 180, at p. 193. See also the judgment of BLACKBURN, J., in *R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, at p. 101, referring to *R. v. Smith* (1860), 30 L. J. M. C. 74, *supra*, p. 29. See also *Percy v. Hall*, [1903], Ryde and Konstam's Rat. App. (1894—1904), 319, *infra*, p. 50.

(*e*) *Allan v. Liverpool*, *Inman v. Kirkdale*, *supra*. The words "occupy" and "rent" were used in the agreement in *Rochdale Canal Co. v. Brewster*, *infra*, p. 34.

(*f*) *London and North Western Rail. Co. v. Buckmaster*, *infra*, p. 35.

(*g*) See *R. v. Stevens* (1865), 12 L. T. 491, *infra*, p. 265; *Kittow v. Liskeard* (1874), L. R. 10 Q. B. 7, *infra*, p. 41. The former case related to the occupation of the whole, not a part, of a complete hereditament, but it seems to be in point on the present question. See also *Mayor, etc., of Southend-on-Sea v. White*, [1906] 17 T. L. R. 5; *Percy v. Hall*, [1903] Ryde and Konstam's Rat. App. (1894—1904), 319, *infra*, p. 50.

(*h*) *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, Ryde and Konstam's Rat. App. (1894—1904), 143, *infra*, p. 34.

(*i*) (1874), L. R. 9 Q. B. 180.

(not belonging to the appellants) allowed to lie too long on the quay space appropriated to the appellants, and this rent was retained by the Dock Board. The Board also appropriated to the appellants space to be used as a coal depôt, "upon sufferance only," under an agreement which used the words "rent" and "tenancy," and the depôt continued to be used by the appellants for eighteen years. Under the special Acts (*k*) the Dock Board were authorised "to set apart and appropriate any particular portion of any dock, wharf, quay, warehouses, sheds, or other works, with the appendages thereto, for the exclusive accommodation and use of any company or firm," subject to the proviso that every company or firm to whom such exclusive accommodation should be afforded, and their vessels, servants, etc., should be subject to the general rules and regulations of the Board applicable to their docks. It was held that the Board had not parted with the occupation, and therefore that they, and not the appellants, were rateable. The decision was grounded on the fact that the use made by the appellants of the parts appropriated to them was subject to the general control exercised by the Dock Board over the docks as a whole; and the appellants were therefore held to be in a position analogous to that of a lodger (*l*).

This decision was followed, on very similar facts, in *Rochdale Canal Co. v. Brewster* (*m*). In that case, the Mersey Dock Board, under the special Acts above referred to, agreed "to set apart and appropriate to the use of" a canal company a berth with the quay space opposite thereto; the company agreed to pay a "rent," and all rates and taxes, to keep the premises in repair "during the continuance of the appropriation" (*n*), to allow the servants of the Dock Board to have free access to all parts of the premises, and to conform to such byelaws and regulations of the Board, as should be applicable to the premises. The quay space appropriated to the company lay between the dock and the street, and was not fenced in. It was held by the Court of Appeal that the company were not in occupation, and were, therefore, not rateable. LOPES, L.J., said (*o*):

"The point in this case is whether such exclusive possession has been parted with by the Board, as is necessary to make the respondents [the canal company] liable to pay rates. In determining this question, it is the intention of the parties which has to be looked at; it is not the words only that are to be regarded. The whole of the circumstances must be taken into consideration. It is the substance of the transaction, rather than the form (*p*), that determines

(*k*) The question when it is permissible to look at the legal title, in determining who is the occupier, is considered, *infra*, p. 51.

(*l*) An extract from the judgment of BLACKBURN, J., is set out, *supra*, p. 28.

(*m*) [1894] 2 Q. B. 852; Ryde and Konstant's Rat. App. (1891—1894), 143.

(*n*) The word "appropriation" was used instead of "tenancy" throughout the agreement.

(*o*) [1894] 2 Q. B., at p. 858.

(*p*) *Cf. R. v. Smith* (1860), 30 L. J. M. C. 74, at p. 76, *supra*, p. 29; see also p. 30, note (*k*).

the question, whether such an exclusive occupation exists as will make the property rateable. In this case, I have come to the conclusion that there is such a predominating right of control reserved to the Board, as to prevent the occupation being so exclusive as to be rateable. In my judgment, what passed to the respondents was the licence to use the accommodation of the cranes, quays, land and water berths, subordinated to superintending control of the Board—a mere incorporeal right. They could not exclude the Board."

Stables in a railway station: Buckmaster's Case.—In *London and North Western Rail. Co. v. Buckmaster* (q), three judges in the Queen's Bench (BLACKBURN, QUAIN, and ARCHIBALD, JJ.) were unanimous in holding that the agreement to which the case related did not create a separate occupation of certain stables at Clapham Junction. In the Exchequer Chamber, six judges were equally divided in opinion, and the judgment of the court below was therefore affirmed, though it can hardly be said to be confirmed.

The decision was doubted by BRETT, L.J., in *Smith v. St. Mary, Lambeth* (r), but appears to have been approved by the Court of Appeal in *Rochdale Canal Co. v. Brewster* (s). It may, perhaps, be said that the doubts thrown upon the decision of the Queen's Bench in *Buckmaster's Case*, did not relate so much to the principles laid down, as to the application of established principles to the particular facts of the case. It is probably true to say that *Buckmaster's Case* is an extreme instance of the application of those general principles.

In *London and North Western Rail. Co. v. Buckmaster* (t), the railway company were the owners of stables at Clapham Junction station, access to which was obtained by gates between the public roads and the company's approach roads. The Clay Cross Company (who were coal-owners) used the stables under a written agreement, whereby, in consideration of the permission "to occupy and use a stable for the accommodation of four horses" (u), the coal-owners undertook to pay "the clear monthly rent or sum of 1*l.* 5*s.*, without any deduction whatsoever," and so long as they should "occupy or use" the said stable, to be bound by the railway company's "byelaws, rules, and regulations," and to "deliver up possession" on receipt of notice in writing. The railway company did not, in fact, exercise any control over the stables, and none of the company's byelaws, rules, and regulations were material. It was held by the Queen's Bench that the railway company intended to retain control over, and not part with the

(q) (1875), L. R. 10 Q. B. 70, 444.

(r) (1882), 10 Q. B. D. 327, at pp. 323, 331.

(s) [1894] 2 Q. B. 352; *Ryde and Konstan's Rat. App.* (1894—1904), 143; *supra*, p. 34.

(t) (1874), L. R. 10 Q. B. 70, 444. With this case *cf.* *London and Blackwall Rail. Co. v. All Saints, Poplar* (1867), 31 J. P. 102.

(u) It was not quite clear whether the agreement related to a particular stable, or whether it would be satisfied by the provision of equal accommodation in any of the stables (of which there were several) at the station (see L. R. 10 Q. B., at p. 79).

possession of, the stables, and therefore that they were rateable (*x*). BLACKBURN, J., said (*y*) :

“The occupier of any property is the person who has the sole and exclusive possession of it, and he is the person who ought to be rated. Whenever the owner of property demises it to another, giving him the exclusive possession and occupation, so as to make him tenant of it, it is the tenant who should be rated, and not the landlord. In this case, however, I do not think what was done did amount to a demise of any portion of this property, but merely to a giving of a licence to have the easement and use of it, analogous to the case of a lodger. . . . If, in the agreement with the Clay Cross Company, they [the owners] agree that that company shall enter into and be possessed exclusively of this stable, and shall continue possessed until a month’s notice shall be given, then the railway company have given them possession of this stable, and the Clay Cross Company are the occupiers; but if the effect of the agreement and the intention of the parties is this, ‘We are occupiers of the station including the stable, and in that stable we do agree with you that we will give you the sole right of putting your horses, but ourselves retaining the control of our stable as part of our station,’ then the railway company remain occupiers.” [BLACKBURN, J., subsequently based his decision. “that the Clay Cross Company were but lodgers in the stable,” on the clause in the agreement whereby they were bound to observe the byelaws, etc.]

And QUAIN, J., said (*z*) :

“It is clear that before this arrangement these stables were a part of the railway station premises at that particular place at Clapham Junction; and these stables are within the curtilage, which curtilage is undoubtedly, taking it as a whole, practically in the possession and occupation of the railway company. These stables can only be approached by the roads over which the railway company undoubtedly have exclusive control, and they are entered by gates at the end of these approaches, which I think we may fairly infer are under the control of the railway company. And therefore the railway company seem to be in possession and occupation of the whole of these premises, very much in the way the cemeteries were held (*a*) to be under the control and in the possession of the cemetery companies.”

Bookstalls at a railway station.—In *Smith v. Lambeth* (*b*), it was held that Messrs. W. H. Smith and Son were not rateable for their bookstall at Waterloo Station (*c*), because they had not exclusive occupation, but merely exclusive enjoyment. The company, under a written agreement in which Messrs. Smith and Son were called “the tenants,” gave to them for the term of seven years the sole and exclusive licence and privilege to sell

(*x*) There was a further question as to some sidings which were “appropriated” to various coal-owners, but which (if not fully occupied by the coal-owner to whom they were appropriated) were appropriated to other coal-owners by the railway company. As to these sidings, the company admitted (and, as the court held, rightly admitted) that they were in occupation, and were rateable.

(*y*) L. R. 10 Q. B., at pp. 76, 77.

(*z*) L. R. 10 Q. B., at pp. 78, 79.

(*a*) See *R. v. St. Mary Abbot's* (1840), 12 A. & E. 824; *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515; *vide infra*, Chapter XXI.

(*b*) (1882), 10 Q. B. D. 327; affirming 9 Q. B. D. 585.

(*c*) The question was not whether the bookstalls were in their nature rateable (see 10 Q. B. D., at p. 329). In rating the railway company for the whole station, the payment made to them in respect of the bookstalls ought in some way or other to be taken into account.

newspapers, books, etc., at all stations, "with full liberty for the tenants, subject to the approval of the engineer of the company, to erect, on such part of the platforms of the said stations as might be approved by the general manager, all necessary bookstands, cases, cupboards, etc., and to remove or alter the position from time to time," with full ingress or egress at all reasonable times for "the tenants," and their servants, to and from the stations "for the purposes of the grant." Persons employed by "the tenants" were to be under the control and to obey all reasonable orders of the station-master, and were to be liable to removal from the station for misconduct. The "tenants" covenanted to pay "rent" monthly, recoverable by distress "as in the case of rent in arrear": not to assign the benefit of the "grant, licence, or agreement," without the consent of the company; and to obey the regulations made by the company concerning the placing of the bookstands, etc., on the platforms. The bookstands, etc., were to be constructed to the satisfaction of the engineer. Some of the bookstalls were fixed to the platforms and walls; some rested merely by their own weight. In the course of the argument, FIELD, J., said to counsel for the assessment committee, "You must show that the company have done something more than grant to Smith and Son 'exclusive enjoyment,'—that they have granted them exclusive occupation" (*d*); and, in giving judgment, he said (*e*):

"The company have granted something. Was it exclusive occupation or exclusive enjoyment? Have they parted with the occupation? To determine this, we must look at the whole scope of the agreement. . . . I come to the conclusion that the parties did not intend the indenture to operate as a demise, but only as a licence or privilege. Here there is a general rateability in the company. Is there then a special rateability in another? The company keep in their own hands the whole control of the ingress and egress. . . . The bookstands are closed at night and locked, and the keys are kept by the servants of the appellants [Smith and Son]. The contents consisting for the most part of small articles, this was a necessary precaution for the security of the appellants' property, and is consistent with an exclusive enjoyment apart from exclusive occupation. A lodger has exclusive enjoyment of the apartment let to him, but if the landlord retains the control and dominion of the whole structure, the tenant has not that exclusive occupation which is required to make him rateable."

This judgment was affirmed (*f*) by the Court of Appeal. BRETT, L.J., said (*g*):

"Parts of the indenture look like a demise, others are wholly inconsistent with an intention to create an interest of that kind. In order to ascertain the

(*d*) Cf. *Allan v. Liverpool* (1874), L. R. 9 Q. B. 180, at p. 192, *supra*, p. 28; *R. v. Smith* (1860), 30 L. J. M. C. 74, at p. 76, *supra*, p. 29.

(*e*) 9 Q. B. D., at pp. 594—596.

(*f*) 10 Q. B. D. 327; 52 L. J. M. C. 1; 48 L. T. 57.

(*g*) 10 Q. B. D., at p. 330.

true meaning, the whole instrument must be looked at; parts of it must not be taken separately, the question arises upon the whole. The grantees are called the 'tenants'; but they can go into the station only at reasonable, that is, particular, times, and for limited purposes; the rent is to be paid for the whole of the licence or privilege granted; the bookstalls and cupboards have been erected with the approval of the company's engineer, and are movable at pleasure, for it is for the company to direct where they are to be placed. It is clear upon these facts that there has been no demise, the indenture creates only a licence or privilege with certain auxiliary rights. In this view Smith and Son have no rateable occupation; the only manner in which the bookstalls can be rated is that the railway company must be assessed at an enhanced value."

Refreshment rooms in an exhibition.—In *R. v. Morrish (h)*, the commissioners for the Exhibition of 1862 gave to refreshment contractors the right to sell refreshments on a space appropriated to them within the exhibition. The contractors were to fit up the space allotted with counters and fittings, to provide cellars, to lay on gas and water. The contractors and their servants were to be subject to the byclaws and regulations of the commissioners, who could require the contractors to discharge immediately a servant guilty of misconduct; provisions were to be brought in within specified hours; the contractors were to keep the appropriated space clean, and to remove all rubbish. The fittings and counters were to become the property of the commissioners when erected. The keys of the doors between the refreshment department and the rest of the exhibition buildings were kept by the commissioners; and the contractors and their servants were locked out every night, and re-admitted every morning. It was held that the contractors were not rateable, because it was not intended that they should have the exclusive occupation of the appropriated space; and WIGHTMAN, J., said (*i*): "To make the occupier (*i.e.*, the person alleged to be occupier) liable, the occupation ought to be exclusive in its nature (*k*). Here the appellants could hardly have power to turn off the commissioners and their friends if they had chosen to walk through the space appropriated to them with the exclusive privilege of selling refreshments."

Lease of a box in a theatre.—In *R. v. St. Martin's-in-the-Fields (l)*, a box in Drury Lane Theatre was let for eighty-two years, under a lease which gave the free and exclusive use and enjoyment of the box, every evening and night upon which any public entertainment should be exhibited in the theatre. It was held that the box was a "tenement," and that it was "held and occupied" by the lessee, within the local Act under which the rate in the parish was made. Whether the case was rightly decided or

(h) (1863), 32 L. J. M. C. 245.

(i) 32 L. J. M. C., at p. 248.

(k) See, however, p. 47, *infra*, as to the meaning of the word "exclusive" in this connection.

(l) (1842), 3 Q. B. 204.

not with reference to the local Act, it is submitted that it is impossible to regard the decision as a correct statement of the law under the statute, 43 Eliz. c. 2, as it is wholly inconsistent with many cases, of which it is sufficient to mention *Allan v. Liverpool* (m), *Rochdale Canal Co. v. Brewster* (n), and *Bradley v. Baylis* (o). It seems clear that the lessee of the box must have used it, subject to such a control on the part of the occupiers of the theatre, as to prevent the lessee of the box from being an "occupier." And in *London and North Western Rail. Co. v. Buckmaster* (p), BLACKBURN, J., puts, as an example of an owner who does not part with the occupation of his property, "the case of a theatre, where the owner of the theatre gives to persons for a term the sole use of a private box or a stall, but never intends to let to them the entire occupation, but keeps to himself the control and occupation of it as part of the theatre" (q).

A mere easement is not rateable.—Under the statute, 43 Eliz. c. 2, the person made liable is the "occupier" of lands, houses, etc. To create liability, occupation is essential, and the possession of a mere easement over, or a right to enter upon land is insufficient (r). But an easement may be so extensive in its nature, that the enjoyment of it may require the entire and exclusive possession (s). "An easement may be of such a character as requires the occupation of land for its exercise, and confers a right to occupy land during its continuance" (t). And the person having the possession involved in such an easement is (for the purposes of the poor rate) the occupier and liable to be rated (u). In considering whether the owner of land has demised the occupation, or merely granted an easement, or a licence to enter and use the land, the substance of the thing, rather than the particular words used in the documents, must be looked at (x). And, even

(m) (1874), L. R. 9 Q. B. 180, *supra*, p. 33.

(n) [1894] 2 Q. B. 852; *Ryde and Konstan's Rat. App.* (1894—1904), 143; *supra*, p. 34.

(o) (1881), 8 Q. B. D. 195, *supra*, p. 27.

(p) (1874), L. R. 10 Q. B. 70, at p. 78.

(q) *R. v. St. Martin's-in-the-Fields* (1842), 3 Q. B. 204, was, however, approved by BLACKBURN, J., in *R. v. Morrish* (1863), 32 L. J. M. C. 245; 11 W. R. 960, *supra*, p. 38.

(r) *R. v. Trent and Mersey Navigation* (1825), 4 B. & C. 57; *Manchester, Sheffield, and Lincolnshire Rail. Co. v. Doncaster Union*, *Ryde's Rat. App.* (1891—1893), 318; affirmed in House of Lords (1894), 71 L. T. 585; *Roads v. Trumpington* (1870), L. R. 6 Q. B. 56; *Talargoch Mining Co. v. St. Asaph Union* (1868), L. R. 3 Q. B. 478.

(s) *R. v. Archbishop of York* (1849), 14 Q. B. 81, at p. 109.

(t) *Holycroft Union v. Halkyn District Mines Drainage Co.*, [1895] A. C. 117, at p. 131; see also p. 48, *infra*.

(u) See *Kittow v. Liskeard Union* (1874), L. R. 10 Q. B. 7, *infra*, p. 41; *Roads v. Overseers of Trumpington* (1870), L. R. 6 Q. B. 56, *infra*, p. 42.

(x) *Mayor, etc., of Southport v. Ormskirk Union*, [1893] 2 Q. B. 468, at p. 473; *Ryde's Rat. App.* (1891—1893), 355, at p. 360. Cf. *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, at p. 858; *Ryde and Konstan's Rat. App.* (1891—1904), 143, at p. 152; and the other cases cited in note (d), *supra*, p. 33.

where a deed has contained a proviso that it was not to be a lease creating a tenancy, but a licence only, it has been held that the person holding under the deed may be rateable as the occupier (*y*).

It is not always easy to apply the general rule to the facts of particular cases, so as to determine whether the grantee of certain specified rights over land has the occupation, or merely an easement or right of entry; but the general rule was thus laid down by CAVE, J., in *Mayor, etc., of Southport v. Ormskirk Union* (z):

“So long as a man who is both owner and occupier grants away certain limited rights only, reserving to himself all the rights except those which he so grants away, he retains the occupation, and the grantee gets merely the limited rights; where, on the other hand, he grants away his rights generally (although, of course, only for a limited time, as must be the case in every tenancy), then, although he may reserve certain rights to himself, he ceases to be the occupier, and the person to whom the general grant is made becomes the occupier in his place.”

This passage assumes the existence of two persons, the grantor and grantee of certain rights, of which persons one or other must be the occupier, and therefore rateable. But it may be that neither the grantor nor the grantee can be rated, for mere ownership does not make the grantor rateable. In cases where the use of the bed of a river, or the soil of a highway, is given to a railway or canal company (or similar bodies) under special Acts, it frequently happens that if the company (having certain limited rights over the land) are held to be not in occupation of it, there is nobody who can be rated at all (*a*).

In *Talargoch Mining Co. v. St. Asaph* (*b*), the appellants, for the purpose of working their mine, diverted a stream through an artificial channel which lay partly on land belonging to the appellants, partly on land for the use of which they made a payment to the occupiers; the watercourse was partly open, partly in tunnel, and for about 350 yards in pipes. It was held that the appellants were in occupation of the whole, and that there was no distinction between the different parts of the watercourse, or between the pipes of the mining company and those of gas and water companies.

Licence to enter land and dig for stone and other minerals.

—The effect of giving a person a licence to enter upon land and dig for minerals *may be* equivalent to giving him the right to

(*y*) *R. v. Stevens* (1865), 12 L. T. 491, *infra*, p. 265.

(z) [1893] 2 Q. B. 468, at p. 473; *Ryde's Rat. App.* (1891—1893), 355, *infra*, pp. 265—267, where the case is more fully considered.

(*a*) See the cases as to the rateability of artificial canals and natural rivers, and of moorings, *infra*, Chapters XVII. and XIX.

(*b*) (1868), L. R. 3 Q. B. 478.

occupy. Whether it is so or not is almost entirely a question of fact; and to answer this question, it appears to be necessary to ask, —Does the exercise of the rights given by the licence involve a physical possession of the soil, and is the right an exclusive right? If these questions are answered in the affirmative then the licensee (on entering) becomes the occupier, and is rateable; but not otherwise (c). The mere grant of a right to enter upon land, if the right be not exercised, cannot make the grantee an occupier. Thus, in *R. v. Fayle* (d), a lease was granted of existing claypits, with the right to dig for clay in other lands. The lessee did not work the pits or dig for clay, and it was held that, until he acted under the lease, there was no occupation, and he was not rateable.

In *R. v. Trent and Mersey Navigation* (e), the proprietors of certain quarries agreed to supply the canal company with stone, and on their failure to do so the company were to be at liberty to enter the quarries and to dig as much stone as they wanted on paying a fixed price per ton. The proprietors made default, and the company entered and worked the quarry, and for twenty years they were the only persons who did so. It was held that the company were not rateable, because there was nothing in the contract to prevent the owners of the quarry from giving to others also the privilege of getting stone; the canal company, therefore, had not any sole and exclusive occupation, but a mere privilege.

This case must be contrasted with *Kittow v. Liskeard Union* (f), in which the owners of lands granted for twenty-one years to certain grantees “liberty, licence, power, and authority to dig, work, and search for” all metals within certain limits, to sink shafts, and erect engines and buildings; reserving to the grantors liberty to enter on the limits, and “to drive pits and adits into any other lands” (g). The grantees entered, erected buildings and fixed machinery, and made tram and other roads. It was held that, even assuming the deed conveyed nothing but a licence, the grantees were in sole occupation *de facto* of the buildings and machinery; that it mattered not whether the grantor had a right to eject them at his pleasure; and that so long as he did not eject them, and they continued in the sole and exclusive occupation of the sheds and engines, they were rateable.

(c) The word “exclusive” must not be understood as meaning that the licensee can exclude all other persons from exercising any rights over the land, but as meaning that he can exclude all other persons from exercising the rights which are given to him: *vide infra*, p. 47.

(d) (1856), 4 W. R. 460. With this case *cf.* *R. v. Heaton* (1856), 20 J. P. 37, where it was held that the owner of land laid down to grass, of which he chose to make no use, was rateable for such land. In that case the owner had the right to possession, and may be said to have been constructively in occupation.

(e) (1825), 4 B. & C. 57.

(f) (1874), L. R. 10 Q. B. 7; 44 L. J. M. C. 23.

(g) It seems clear that the grantors did *not* reserve the right to dig for minerals within the limits.

The difference between *R. v. Trent and Mersey Navigation* (*h*) and *Kittow v. Liskeard Union* (*i*) consists in these facts: Although in both cases the persons whom it was sought to rate were the only persons who in fact worked the minerals, in the former case other persons could (both in law and in fact) have worked in the same way as the persons who were rated; while in the latter case other persons could not have so worked. The use of the buildings and engines by the appellants in *Kittow v. Liskeard Union* not only involved a physical possession of the soil, but was of such a character that no similar use could be made of the same soil by any other persons. No such user of the soil existed in *R. v. Trent and Mersey Navigation*.

It must be noticed that in *R. v. St. Austell* (*k*) it was held that persons having the sole and exclusive privilege of working a mine had not the occupation but merely a licence to enter. The rating of mines is, however, now regulated by the Rating Act, 1874 (37 & 38 Vict. c. 54), which is considered in Chapter XXI, *infra*.

Licence to dig coprolites: Roads v. Trumpington.—The same principle on which the cases above mentioned were decided was acted upon in *Roads v. Trumpington* (*l*), sometimes called “the coprolite case,” in which the facts were as follows: The owner of land which was let to an agricultural tenant agreed to permit the appellant to enter and dig for coprolites, the right to give such permission having been reserved on the letting of the land. The appellant was “to enter upon” the land, and (after excavating the coprolites) was to restore it to a proper state for cultivation and “peaceably and quietly to deliver it up” to the tenant. The method of working was to remove the top soil and to dig out the sub-soil till the coprolites were reached at a depth of about twelve feet; the coprolites were then dug out and washed, the wet earth (or “slurry”) being run into the pit from which the coprolites were dug, and remaining there until it was sufficiently dry to carry the sub-soil, which was subsequently replaced, the top soil being then added, and the land was restored to the tenant. It was held that the appellant was in occupation and had more than a mere easement, the decision being based, first, on the words of the agreement, and, secondly, on the nature of the works to be done by the appellant under the agreement, which could hardly be done without the sole and exclusive possession of the land.

In *R. v. Whaddon* (*m*) the question was raised for how much land a person digging coprolites was to be rated when the quantity

(*h*) (1825), 4 B. & C. 57, *supra*, p. 41.

(*i*) (1874), L. R. 10 Q. B. 7.

(*k*) (1822), 5 B. & Ald. 693. The authority of this case on this point appears to be shaken by *Roads v. Trumpington* (1870), L. R. 6 Q. B. 56; but see also *Van Mining Co. v. Llanidloes* (1876), 1 Ex. D. 310.

(*l*) (1870), L. R. 6 Q. B. 56.

(*m*) (1875), L. R. 10 Q. B. 230.

of land used in the course of a year was (approximately) ten acres, though not always the same ten acres were in use at one time. It was held that he was to be rated for ten acres at their value as land containing coprolites. The case, so far as it deals with the question of the amount to be fixed as the rateable value, is considered below (*n*); but a few remarks on the question of occupation may be made here. If the person digging coprolites occupies a field of ten acres during the first six months of a year, and then goes out of possession and occupies another field of ten acres during the last six months, he is of course liable to be rated for either field only so long as he is in possession of it; and technically the proper course is to rate him as the occupier of each field for six months only. But if, as was the case in *R. v. Whaddon*, each field occupied is of equal value per acre, and the change of possession is a gradual one, taking place yard by yard, and day by day, a difficulty arises if the occupier is rated as though he occupied one and the same area throughout the year. For if the tenant takes a fresh piece of ground after a rate has been made, it is by no means clear that he can be rated as the occupier of that piece of ground until the next rate is made. If by that time he has again gone out of possession, he will escape from being rated in respect of it (*o*).

Right to use land: when it amounts to occupation.—There have been many cases dealing with the question whether the right to use land for certain limited purposes or in a particular way amounts to occupation or not. In an old case (*Lord Bute v. Grindall*) (*p*), it was said “the person who is in possession of the immediate profits may be taxed to the relief of the poor in respect of those immediate profits; *quoad* those immediate profits, he is an occupier of the land within the meaning of those authorities which have decided that the occupier only can be assessed to the relief of the poor.” It is perhaps hardly possible to reconcile all the cases; but it is submitted that the true rule is similar to that suggested above (*q*), that a use of land will amount to occupation if it involves physical possession, and the exclusion of all other persons from using the same portion of land in the same way (*r*). This appears to be the principle on which it was held that a tramway company are rateable for their rails laid in the public highway (*s*). The company by means of their rails were in

(*n*) *Vide infra*, Chapter XXI.

(*o*) But see also pp. 405, 406, *infra*, as to the bearing of *Farnham Flint and Gravel Co. v. Farnham Union*, [1901] 1 K. B. 272; *Ryde and Konstam's Rat. App.* (1894—1904), 217, on the case above cited.

(*p*) (1793), 1 T. R. 338; 2 H. Bl. 265.

(*q*) With reference to the rating of persons digging for minerals, *supra*, p. 41.

(*r*) See further, as to what is meant by “exclusive occupation,” *infra*, p. 47.

(*s*) *Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9.

physical possession of a portion of the soil, and although they could not exclude the public from driving over the surface, they could exclude the public from using the rails with flanged wheels, which particular form of user was reserved exclusively for the tramway company (*t*). But in *R. v. Jolliffe* (*u*), where the appellant, for the purpose of working his coal mines, made an arrangement to use the waggon-ways of an adjoining landowner on payment of a fixed sum per ton of coals carried, the landowner himself using the waggon-ways as well as the appellant, it was held that the appellant was not the occupier of the waggon-ways, and was not rateable. Now, assuming that the appellant had the right to have the rails for the coal waggons kept in position, he had no right to exclude the landowner (or his licensees) from using the rails in precisely the same way in which he himself used them (*x*).

So, too, in *R. v. Bell* (*y*), where the appellants had obtained, from the owners of lands adjoining their coal mines, a lease of way-leaves and liberty of passage over those lands, and had under the lease laid down a waggon-way, levelled and fenced the ground, constructed bridges, and built houses for gate-keepers, it was held that the appellants were occupiers of land and were rateable.

Again, the erection of telegraph posts by the side of a railway was held, in *Electric Telegraph Co. v. Salford* (*z*), to amount to an occupation of land for which the telegraph company were rateable, even though the railway company could require the removal of the posts to another position if they interfered with the working of the railway. The right to call for the removal of the posts might affect the duration of the occupation, but did not affect the character of the occupation while it lasted: the telegraph company were occupying tenants, although merely tenants at will (*a*). In *Lancashire Telephone Co. v. Manchester* (*b*), the attachment of a wire by means of a spike or bracket to a chimney or roof was held to amount to an occupation of land, the building to which the wire was attached being regarded as part of the land on which it stood. The company had a peculiar use of the wires, and of some at least of the spikes to which they were attached, which prevented a similar use of those wires and spikes by any other person. So that (it is submitted) the case comes within the general rule suggested above, viz., that the use of land which involves physical

(*t*) See *Cottam v. Guest* (1880), 6 Q. B. D. 70.

(*u*) (1787), 2 T. R. 90.

(*x*) The question, which of two railway companies is rateable for a line which belongs to one company, while another company works it or has running powers over it, will be considered under the head of "Railways," *infra*, p. 228.

(*y*) (1798), 7 T. R. 598.

(*z*) (1855), 11 Ex. 181.

(*a*) Cf. *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156, at p. 169, *infra*, p. 265; *R. v. Stevens* (1865), 12 L. T. 491, *infra*, p. 265; *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705; *infra*, p. 267.

(*b*) (1884), 14 Q. B. D. 267; the case is further considered in Chapter XX., *infra*.

possession and the exclusion of all other persons from using the same portion of land in the same way amounts to occupation (*c*).

It must, however, be admitted that it is extremely difficult to lay down any general rule which shall be consistent with all the decided cases, as may be seen by comparing the cases relating to advertisement hoardings (*d*), and the cases relating to the rating of moorings and floating vessels (*e*). The cases dealing with the rating of canals or navigable rivers, and of towing-paths, locks and weirs (*f*), also present some little difficulty.

In *Mogg v. Yatton* (*g*), the owner of land, which was unlet, sold the grass and the right of grazing for a fixed period by auction. By the conditions of sale, the purchaser was to dress the dung, cut the thistles, and leave the fences in good repair, and the vendor was to pay rates and taxes. The justices, on an application for a distress warrant against the landowner, held that he (and not the purchaser) was in occupation as from the date of the sale. This ruling the Queen's Bench refused to disturb, on the ground that the question was one of fact, of which the justices were judges. But as the rights of the landowner must have been very limited, and could not be exercised so as to interfere with the rights of the purchaser of the grass, it is not easy to reconcile this decision with *Holywell Union v. Halkyn District Mines Drainage Co.* (*h*).

It seems clear that if the owner of grass land gives a grantee the right to put horses or cattle thereon, reserving for himself or for other grantees similar rights, the owner, and not the grantees, is rateable (*i*).

For the purposes of the parliamentary franchise, it was held in an Irish case, that the owner of land (the grazing of which he had let, but for which he was rated) had not ceased to be the occupier, and was entitled to a vote as such (*k*).

In *Mildmay v. Overseers of Wimbledon* (*l*), the National Rifle Association were held not rateable in respect of the use they made of Wimbledon Common, even though they erected butts which remained on the ground all the year round, and though during the meetings the public were excluded from part of the common,

(*c*) It may be said that the rule here suggested is in conflict with the decision in *Mayor, etc., of Southport v. Ormskirk Union*, [1894] 1 Q. B. 196; Ryde's Rat. App. (1891—1893), 355, 438, *infra*, p. 265. It is submitted that the rule suggested in the text is consistent with the general principles laid down in that case; whether the rule is consistent with the application of the general principles to the special facts of that case may be doubtful. The case is further considered, *infra*, p. 267.

(*d*) *Infra*, pp. 67, 68; and see especially *R. v. St. Pancras* (1877), 2 Q. B. D. 581, *infra*, p. 67.

(*e*) The cases are collected in Chapter XIX., *infra*. Compare especially *Forrest v. Greenwich Overseers* (1858), 8 E. & B. 890, with *Grant v. Oxford Local Board* (1868), L. R. 4 Q. B. 9.

(*f*) *Vide infra*, Chapter XVII.

(*g*) (1880), 6 Q. B. D. 10.

(*h*) [1895] A. C. 117, *infra*, pp. 47—49.

(*i*) *Cf. R. v. Trent and Mersey Navigation* (1825), 4 B. & C. 57, *supra*, p. 41.

(*j*) *O'Shea v. Meara* (1868), Ir. R. R. & L., Ap. 1; W. N. (Sept. 30, 1899), 177.

(*k*) (1872), 41 L. J. M. C. 133.

except on payment for admission ; but this decision turned on the terms of the special Act, which limited the rights of the association to a "statutory privilege." The association were, however, held rateable in respect of a permanent brick-built store shed, which they used continuously throughout the year.

Use of land for deposit of spoil.—In *East London Waterworks Co. v. Stratford Overseers* (*m*) the water company were owners of a disused reservoir which they desired to have filled up for building purposes, and they granted to the contractors engaged in constructing a railway, permission to deposit on the land the earth excavated in the course of their works, on payment of an agreed sum per load. The earth was brought on the land in waggons running on temporary tram lines, laid down when and where they were wanted. The overseers contended that the water company were rateable, but the King's Bench Division (WILLS and PHILLIMORE, JJ.) held that the company were not in occupation, although they were in possession in the sense in which possession flowed from ownership ; that occupation was entirely distinct from such legal possession ; and that any acts which were done were in no sense done, or permitted to be done, by the company as the occupiers of the vacant land.

In this case no attempt appears to have been made to rate the contractors. Their right to deposit earth was closely analogous to a right to dig for minerals, and their liability to be rated would probably depend upon the question whether they had an exclusive right or not (*n*). If they had an exclusive right, it is submitted that they would have been rateable, just as they would be rateable if they hired land for storage of movable plant. If they had no exclusive right, they would not be rateable ; but it appears very difficult to see why in that case the owners should not be rateable. If the land had been let to a yearly tenant with liberty to fill up the site, and he in turn had dealt with the contractors, it is submitted that such a tenant would have been rateable. If so, it is difficult to see why the owners, dealing directly with the contractors, should not be equally rateable.

Occupation of different strata in the same portion of land.—The word "land" is used in the statute 43 Eliz. c. 2, in the widest possible sense, including everything above and below the surface (*o*). But the rateable occupier of the surface is not necessarily the rateable occupier of all that is above or below the surface. A company

(*m*) [1901] 45 Solicitors' Journal, 261, where unfortunately only a brief note of the judgment is given.

(*n*) Compare *R. v. Trent and Mersey Navigation* (1825), 4 B. & C. 57, with *Küttow v. Liskard* (1874), L. R. 10 Q. B. 7, *supra*, pp. 41, 42.

(*o*) But see Chapter XXI., *infra*, as to mines other than coal mines.

may be rateable for gas or water pipes (*p*) below the surface, while another company is rateable for the tramway laid in the road over the pipes (*q*); or if a house be built over the gas or water pipes, another person may be rateable for the house, or several persons may be rateable for the several floors of the house (*r*), while a telegraph company may be rateable for wires attached to the chimneys or roofs of the house (*s*). So far as rateability is concerned, where two or more persons are separately rated as the respective occupiers of properties which are above or below the same portion of the surface of the land, the question to be determined is whether there is a separate and distinct occupation of the several properties, rather than whether the things occupied can be regarded as parts of one and the same portion of land.

What is meant by “exclusive” occupation.—The propositions stated in the preceding paragraph must be borne in mind, in considering what is meant by “exclusive” occupation. There is a certain class of cases (*t*) in which (to use an ambiguous term) an under-tenant of a part of a larger hereditament has been held to be not rateable, because he could not exclude the landlord from entering at any time on the part which was under-let. From these cases, it has been sometimes erroneously inferred that a person cannot be the “occupier” of land within 43 Eliz. c. 2, unless he has the right to exclude all other persons from entering on the land which he is said to occupy. That this proposition cannot be true, may be seen by taking the case of an unfenced public footpath running across a meadow. No one could possibly suggest that the agricultural tenant of the meadow was not rateable as the “occupier,” merely because he could not exclude the public from walking across the meadow.

Occupation by means of a tunnel: the Halkyn Case.—The proposition that “occupation” may be consistent with the existence of an easement over the same piece of land, was illustrated in *Holywell Union v. Halkyn District Mines Drainage Co.* (*u*). In that case the drainage company, which was formed for the purpose of draining certain mines under a special Act, had power to make tunnels, and to widen and divert existing tunnels and an

(*p*) *R. v. Birmingham Gas Co.* (1823), 1 B. & C. 506; *R. v. Rochdale Waterworks Co.* (1813), 1 M. & S. 634; *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156.

(*q*) *Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9.

(*r*) *Allchurch v. Hendon Union*, [1891] 2 Q. B. 436, *supra*, p. 31.

(*s*) *Lancashire Telephone Co. v. Manchester* (1884), 14 Q. B. D. 267; see Chapter XX.

(*t*) See, for example, *London and North Western Rail. Co. v. Buckmaster* (1874), L. R. 10 Q. B. 70, 444, *supra*, p. 35; *Smith v. Lambeth* (1882), 10 Q. B. D. 327, *supra*, p. 36; *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, *supra*, p. 34.

(*u*) [1895] A. C. 117 (affirming the decision of the Queen’s Bench Division, reported in *Ryde’s Rat. App.* (1891—1893), at p. 338).

open watercourse, for draining the mines which were worked by other persons as mining lessees. The drainage company inclosed the tunnel in places in iron tubing about five feet high, and in other places bricked it over; they also deepened the watercourse, and built up the sides of it. Part of the tunnel was used only for the flow of water: inside part of it the mining lessees laid a tramway, above the water level, under powers reserved in a deed made under the authority of the special Act, and used the tramway for hauling materials and the passage of their workmen. In this part of the tunnel the mining lessees also placed air-pipes used for ventilation and working rock drills. The deed, under which the drainage company worked, purported to grant them only easements, right of drainage, and "exclusive rights of using" the tunnel, reserving to the owner and his mining lessees the right to use the tunnel for tramways, etc., provided that such user did not obstruct or interfere with the works of the drainage company. The deed did not convey or demise the land itself.

It was held by the House of Lords that the drainage company were in occupation and were rateable, notwithstanding the use of the tunnel by the mining lessees. Lord HERSCHELL, L.C., said (*x*) :

"The case appears to have been treated by the judges [in the Court of Appeal] as one in which the only alternative views were ownership or easement. I do not think this is so. No doubt if it could be shown that the respondents [the drainage company] were the owners of the tunnel, this would negative the idea of their being entitled merely to an easement, and being owners they would *prima facie* be the occupiers; they would be so regarded unless the occupation were shown to be in some one else. But even if it be established that on the true construction of the deed they are not owners, it does not follow that they were possessed of an easement only, and were not occupiers. There may be occupation without even the existence of the relation of tenant towards the owner of the property. And I think land may be occupied for the purpose of, and in connection with, the enjoyment of an easement in such a manner as to make the person so occupying liable to be rated. . . . As to those parts of the tunnel which are occupied [by the iron tubing and the brick arches], I can see no substantial distinction between the present case and those in which it has been held that water companies, tramway companies, and telephone companies are rateable. But even as to the part where there is no tubing or arches, I think the respondents [the drainage company] are in possession. They may at any time place such works in any part of the tunnel that they please, and it rests with them not only in the first instance to determine the direction of the tunnel, but at any time they please to divert it, and alter its direction. The question whether a person is an occupier or not, within the rating law, is a question of fact and does not depend upon legal title (*y*). The person legally possessed may not occupy. On the other hand, a person may be occupier either with or without the consent of the owner. . . .

"It was contended on behalf of the respondents [the drainage company] that they could not be liable to be rated, inasmuch as they were not in.

(*x*) [1895] A. C., at pp. 120, 125, 126.

(*y*) See the remarks on this passage, *infra*, p. 51.

exclusive occupation. There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen, which of them is rateable. Where a person, already in possession, has given to another possession of a part of his premises, if that possession be not exclusive, he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in occupation, but the occupation of the landlord is paramount, that of the lodger subordinate. In the present case, in my opinion, on the true construction of the deed, the possession of the respondents [the drainage company] is paramount, and any rights which the landlord has are subordinate. . . . It is not necessary to consider whether the occupiers of the tramway [laid down in the tunnel] could be separately rated in respect of it."

And Lord DAVEY said (z) :

"It is clear that exclusive occupation does not mean that nobody else has any rights in the premises. The familiar case of landlord and lodger is an illustration. The cases show that if a person has only a subordinate occupation, subject at all times to the control and regulation of another, then that person has not occupation, in the strict sense, for the purposes of rating, but the rateable occupation remains in the other, who has the right of regulation and control" (a).

The case of a landlord and his lodger is a case in which, of two persons having rights over a house, one only is rateable. But cases frequently arise where two persons have rights over the same hereditament, the rights of each qualifying the rights of the other, and *both* persons are rateable. The telephone company attaching their wires to the chimney of a house, and the householder occupying the interior of that house, are both rateable (b), though the rights of each must be qualified by the rights of the other. The telephone company could not (for example) obstruct the passage of smoke up the chimney, nor could the householder do anything which would defeat the use of the wires. In *Holywell Union v. Halkyn District Mines Drainage Co.* (c), Lord HERSCHELL seems to assume that possibly there might be two persons rated for the same tunnel:—the drainage company for the general use of the tunnel for drainage, the mining lessees for their special use of the tramway laid in the tunnel. And it is submitted that as land may (so to speak) be subject to different strata of occupation superimposed one upon another, an occupation of one kind by one person may still be regarded as "exclusive occupation," for the purposes of rating, if it excludes all other

(z) [1895] A. C., at pp. 133, 134.

(a) So, too, in *Roads v. Trumpton* (1870), L. R. 6 Q. B. 56, *supra*, p. 42, the grantee of the right to dig for coprolites was held to be in occupation, although certain limited and subordinate rights were reserved to the agricultural tenants.

(b) See *Lancashire Telephone Co. v. Manchester* (1884), 14 Q. B. D. 267, *supra*, p. 44; see also Chapter XX., *infra*.

(c) [1895] A. C. 117, at p. 126 in the last line of the passage cited above.

persons from using the land in the same way (*d*), although other persons may use the land in some other way, and may even use it in such a way as to render themselves also rateable as occupiers. In *Cory v. Bristow* (*e*), Lord HATHERLEY said: "The courts have not meant by the term 'exclusively' that the interest may not be determined on certain terms and conditions, but merely that the person so occupying should have the right unattended by a simultaneous right of any other person in respect of the same subject-matter." The subject-matter with which Lord HATHERLEY was dealing (*viz.*, moorings in the bed of a navigable river) could be used in one way only; and it is submitted that the judgment, taken with reference to such a subject-matter, does not contradict the rule suggested above.

Occupation of sewage works in connection with a sewage farm.—In *Stourbridge Main Drainage Board v. Seisdon Union* (*f*) the drainage board were owners of a sewage farm and the sewage works and sewers connected therewith. They let the sewage farm to an ordinary agricultural tenant under a lease, whereby they reserved to themselves the right of entry to repair, maintain, etc., the main outfall sewers, the rising main, valves, sluice-chambers, drains, and other works requisite for the use of the farm as a sewage farm. The board were to have full and sole possession and control of the main outfall valve chamber and the rising main or outfall sewer, and for these the board were rated and did not dispute liability. The tenant was bound to cultivate the farm as a sewage irrigation farm, and to keep the carriers and other sewage works on the farm properly flushed and cleansed. The tenant was rated for the farm, apart from these carriers and sewage works, for which it was sought to rate the board. The Sessions held that the board were not in occupation of these carriers and sewage works. This decision was upheld by the King's Bench Division, as being a question of fact on which they could not say that the Sessions were bound to hold that the board were in occupation; but Lord ALVERSTONE, C.J., also said that he would have come to the same conclusion as the Sessions.

Occupation of a public toll bridge.—In *Percy v. Hall* (*g*), the Corporation of York had granted to the appellant a lease of a toll-house and of the tolls of a public bridge made under a local Act, but the lease did not in terms demise the bridge itself. The lessee admitted that he was rateable for the toll-house, but denied

(*d*) On this principle a telegraph company were held rateable for their wires and posts along a line of railway for which the railway company were rated. See *Electric Telegraph Co. v. Salford* (1855), 11 Ex. 181, *supra*, p. 44; see, also, as to the rating of a tramway laid in a public highway, *supra*, p. 43; see also Chapter XX., *infra*.

(*e*) (1877), 2 App. Cas. 262, at p. 276.

(*f*) [1902] 66 J. P. 372; 86 L. T. 415.

(*g*) [1903] Ryde and Konstam's Rat. App. (1894—1904), 319.

that he was in occupation of the bridge. The bridge was a swing bridge, and the Corporation reserved to themselves the right to open it at certain hours for the purposes of navigation. It was held that, having regard to the nature of the hereditament, the occupation of which it was capable, and the combined effect of the covenants in the lease, the lessee had something more than a mere easement, and was in rateable occupation of the bridge; and the court, on the authority of *Holywell Union v. Halkyn District Mines Drainage Co. (h)*, treated the question rather as a question of fact than as a matter of conveyancing.

It may be useful to point out that in *Percy v. Hall* the reservation by the lessors of the right to open the bridge for navigation, and thereby close it to the traffic which paid the tolls, was not a right to use the bridge, but to put it out of use; and the exercise of the right, however prolonged, could hardly make the lessors rateable. And if either the lessee, or nobody, was rateable for the bridge, it was very difficult to contend that there was no occupier of a bridge which was used on payment of tolls, and from which the owners, or their lessee, had the right to exclude everybody who did not pay tolls (*i*).

When title may be looked at to determine who is the occupier.—In *Holywell Union v. Halkyn District Mines Drainage Co. (k)*, Lord HERSCHELL, L.C., said: “The question whether a person is an occupier or not within the rating law is a question of fact, and does not depend upon legal title.” And in the same case Lord MACNAGHTEN said (*l*): “Liability to rates is not a matter of title. The question in each case must be whether there is in fact such an occupation as, according to the Statute of Elizabeth and a course of decisions which have been recognised and established as law, carries with it liability for rating purposes.” Again, in *Lord Bute v. Grindall (m)*, it was said: “It is perfectly immaterial what interest the occupier has in the lands; whether he holds as tenant at will, or by any other tenure. It is not necessary to inquire into the occupier’s title.” From these and similar passages, it is sometimes wrongly inferred that, in considering the question of occupation, the title of the person alleged to be the occupier is absolutely immaterial, and may be left out of consideration altogether. But this is clearly not the true view of the law; and,

(h) [1895] A. C. 117, *supra*, p. 47.

(i) The rating of bridge-tolls is further considered in Chapter XVI., *infra*, p. 313.

(k) [1895] A. C. 117, at p. 125, *supra*, p. 48. If the sentence be understood to mean that “the existence of a legal title is not essential to occupation,” there can be no objection to it.

(l) [1895] A. C., at p. 127.

(m) (1786), 1 T. R. 338, at p. 343; affirmed in the Exchequer Chamber, (1793) 2 H. Bl. 265. Note that the passage here quoted assumes that the person rated was the occupier. To inquire into the title of a person found to be the occupier is one thing; to inquire into the title of the person rated in order to discover whether he is the occupier is another.

indeed, in the cases from which the above passages are cited, the effect of the documents of title (under which the alleged occupiers held) was carefully considered. It is submitted that it would be wrong to take these isolated passages apart from the rest of the judgments, and that the rule which may be gathered from all the cases on the subject is as follows:—Where there is visible physical possession (*n*) of land, the absence of title cannot be relied on by the person in possession in order to escape from rateability; but where there are acts of user (not necessarily involving complete possession of land) which are of an ambiguous character, and may be consistent either with the right to full occupation, or with the existence of a mere easement, then the title of the person using the land may be looked at, in order to determine whether he is the occupier. The rule may, perhaps, be expressed in other words thus:—Title may be looked at to enlarge, but not to cut down, the apparent character of the use made of the land: it may be looked at to see whether acts (which *primâ facie* may be done under a right to an easement or a licence) are done in the exercise of a right to possession, but title may not be looked at in order to show that the person *de facto* in possession enjoys a mere easement.

Absence of title may be immaterial.—That the absence of title will not exempt from rateability a person in occupation appears from the following cases. In *R. v. Bell* (*o*), the appellant was rated as the occupier of a “waggon-way,” held under the Dean and Chapter of Durham; and it was argued that as the Dean and Chapter could not grant the soil, the appellant took only a wayleave, or easement. But the court rejected the argument, and Lord KENYON, C.J., said: “We are not to inquire into the titles of the occupiers. If a disseisor (*p*) obtain possession of land he is rateable as the occupier of it.” And in *Bruce v. Willis* (*q*), it was said that if a trespasser, in possession of land, were rated, it would signify nothing whether he were the owner or not.

In *R. v. Leith* (*r*), which related to the rating of a floating pier, there being some question as to the title of the appellants to use the land as they had done, Lord CAMPBELL, C.J., said in the course of the argument: “For the present argument we must assume the occupation to be rightful.” And in *Cory v. Bristow* (*s*), which related to the rateability of certain moorings in the bed of the river Thames, before proceeding to consider the effect of the

(*n*) We are not now dealing with the possession of a servant. The so-called occupation of a servant is in law the occupation of his master: *vide supra*, p. 21.

(*o*) (1798), 7 T. R. 598, at p. 601, *supra*, p. 44.

(*p*) That is, he who wrongfully puts out one that is seized of the freehold.

(*q*) (1840), 11 A. & E. 463, at p. 479.

(*r*) (1852), 1 E. & B. 121, at p. 131: *vide infra*, Chapter XIX.

(*s*) (1877), 2 App. Cas. 262.

licence under which the moorings were laid down and used, Lord CAIRNS, L.C., said (*t*) :

“For the purpose of rating it might, indeed, be sufficient to look at the mere fact of occupation. The appellants are found in occupation of that which is to them a valuable occupation of this fixed property, and are therefore rateable to the relief of the poor, even though it might turn out that their occupation is a wrongful one, or one the propriety of which they cannot justify.”

Again, in *Kittow v. Liskeard* (*u*), it was held that a person *de facto* in occupation of land was rateable, even though the deed under which he entered conveyed nothing but a licence (*x*).

In all the cases above cited, in which it was held *not* to be permissible to look at the title, the object for which it was sought to refer to the title was to show that a person (whom the court held to be *de facto* in occupation) had no title to the occupation.

A distinction may here be noticed. If a person, *de facto* in physical possession of land, were to claim to show that his possession was that of a trespasser, and on this ground to escape rateability, he would then be taking advantage of his own wrong (*y*) ; but no such result follows where a person produces evidence of title to show that his acts (which may or may not amount to an exercise of the right to occupy) are lawfully done under a title which gives no such right.

Title may be looked at where character of user is ambiguous.

—Where, however, the acts of user done by the person rated for the land do not involve complete possession of it, and are ambiguous in their character, then title may be looked at (*z*). Suppose the person rated for woodlands is shown to have walked through them once a week. If nothing more were known it would be necessary to inquire whether he were the owner or lessee of the land, or walked through under a licence from the owner or lessee. If he merely walked through under such a licence he would clearly not be rateable. But if he were the owner and had not let the land he would be rateable as the occupier, because he had the right to occupy, although he made so little use of the right. For owners are *primâ facie* to be regarded as occupiers (if there be any acts of user at all) unless the occupation be shown to be in some one else (*a*). Where there is no

(*t*) 2 App. Cas., at p. 273.

(*u*) (1874), L. R. 10 Q. B. 7, *supra*, p. 41.

(*x*) Cf. also *Roads v. Trumington* (1870), L. R. 6 Q. B. 56, *supra*, p. 42.

(*y*) Cf. *Coomber v. Berkshire J.J.* (1882), 10 Q. B. D. 267, at p. 282.

(*z*) In *Mildmay v. Overseers of Wimbledon* (1872), 41 L. J. M. C. 133, *supra*, p. 45, the court looked at the title where the acts of user were ambiguous, and held the appellant not rateable. But in respect of sheds which were manifestly in his occupation, though apparently under the same title, the appellant was held rateable.

(*a*) *Holywell Union v. Halley District Mines Drainage Co.*, [1895] A. C. 117, at p. 121, *supra*, p. 48.

actual possession in another person the possession follows the property (*b*). And, therefore, where the owner of land has been rated, and it is not clearly shown in fact whether he or another person is in actual possession, it is permissible to look at the title and to show that there has been no demise sufficient to convey the occupation from the owner, who is therefore rateable (*c*).

In all cases where the question is whether the person rated for a part of a larger hereditament is an independent occupier, or is in a position analogous to that of a lodger (*d*), title must necessarily be looked at, for the acts of user on the part of the person rated are (*prima facie* at least) consistent either with a separate and independent occupation by the tenant, or with an occupation subordinate to that of the landlord: title must, therefore, be looked at to understand the true character of the occupation.

Occupation during part of the period for which the rate is made.—The general rule under the statute 43 Eliz. c. 2, was that liability to be rated depended upon occupation at the date of the rate. If at that date the person rated was in occupation of the land for which he was rated, he remained liable for the whole rate although he ceased to occupy before the expiry of the period for which the rate was made (*e*). And if a person came into occupation after the making of the rate, he escaped liability altogether, because it was illegal to add a name to a rate after its allowance by the justices, even though the addition were made with their consent (*f*). To remedy this inconvenience the Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 12, provided for an apportionment between outgoing and incoming occupiers. In *Edwards v. Rusholme* (*g*), it was held that where there was an interval between the departure of the old and the arrival of the new tenant, the former remained liable for the period until the new tenant came in. To meet this decision, s. 12 of the Poor Relief Act, 1743, was repealed by s. 16 of the Poor Rate Assessment and Collection Act, 1869 (*h*), which provided for the apportionment of the rate in the

(*b*) *R. v. Mayor, etc., of London* (1790), 4 T. R. 21, at p. 26; *sed cf. Hare v. Overseers of Putney* (1881), 7 Q. B. D. 223, at p. 231, *supra*, p. 17. It is on this principle that navigation companies have been held rateable for an artificial canal of which they are the owners, but not rateable for a natural river bed, of which they are not owners, although the method of using and controlling the artificial canal and the natural river may be practically identical: *vide infra*, p. 336.

(*c*) See *R. v. Marquis of Salisbury* (1838), 8 A. & E. 716, *infra*, p. 313, where there was a mere parol agreement, not sufficient to operate as a demise. See also *R. v. Mayor, etc., of London* (1790), 4 T. R. 21.

(*d*) The cases are collected, *supra*, pp. 32–38.

(*e*) *Edwards v. Rusholme* (1869), L. R. 4 Q. B. 554.

(*f*) *R. v. Barrat* (1780), 2 Doug. 465. Except in the case of an occupier coming in after the date of the rate, or in the case of a new house or other building added to the rate under s. 38 of the Poor Law Amendment Act, 1868 (*infra*, p. 55), such an addition is still illegal outside the metropolis. See *Pembroke v. Overseers of Wye* (1883), 47 J. P. 359. But as to the metropolis, see ss. 47 (9) and 72 of the Valuation (Metropolis) Act, 1869, in Appendix II.

(*g*) (1869), L. R. 4 Q. B. 554. (*h*) 32 & 33 Vict. c. 41, set out in Appendix II.

case of an occupier going out of occupation; but in *St. Werburgh v. Hutchinson* (*i*), which was affirmed in *Hare v. Overseers of Putney* (*k*), it was held that s. 16 of the Act of 1869 did not protect the outgoing occupier from liability to pay the whole rate, unless he was succeeded by an incoming occupier who was liable to be rated. To meet these decisions it was enacted by the Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (*l*), that "the outgoing occupier shall be liable to pay so much of the rate as shall be proportionate to the time of his occupation, notwithstanding he may not be succeeded in his occupation by an incoming tenant."

To prevent the occupier of a new building from escaping liability to the rate current when the building was completed, the Poor Law Amendment Act, 1868, s. 38 (*m*), provides that—

"Where any person shall occupy any new house or other building in any parish where the poor rate is not made under the provisions of a local Act, which house or building was incomplete or not fit for occupation, or was not entered as such in the valuation list in force in the parish, at the time when the current rate for the time being was made, the overseers may enter such house or building, with the name of the occupier thereof and the date of the entry, in the rate book, . . . and the person so charged shall be considered as actually rated from such date."

It must be noticed that this section does not apply to every kind of rateable hereditament, but only to a "new house or other building." The term "building" is not defined in the Act, but it is submitted that (having regard to the juxtaposition of the word "house") it would be held not to include such structures as a line of railway, a reservoir, or gas or water mains underground.

In calculating the proportion of the rate for which an occupier is liable, where he goes into, or out of, occupation during the period for which the rate is made, that period must be taken to begin on the day when the rate is allowed by the justices (*n*); so that where rates are made half-yearly, for periods ending at Lady Day and Michaelmas, if the making of any rate is delayed after those dates, the commencement of the rate does not run from the expiry of the period for which the last rate was made.

It is difficult to say how the exact proportion is to be determined if any question arises. By s. 12 of the Poor Relief Act, 1743 (17 Geo. 2, c. 38), the question was to be determined by two justices; but this section is repealed, and the special provision

(*i*) (1879), 5 Ex. D. 19.

(*k*) (1881), 7 Q. B. D. 223.

(*l*) 45 & 46 Vict. c. 20, s. 3, set out in Appendix II.

(*m*) 31 & 32 Vict. c. 122, set out in Appendix II. See also *infra*, p. 535. The section is repealed as to the "metropolis" by the Valuation (Metropolis) Act, 1869, s. 77, and the provisions of s. 47 of that Act are substituted for it: *vide infra*, Chapter XXXIII.

(*n*) *R. v. Tempest* (1898), 14 T. L. R. 199; *Davis v. Woodfield*, [1900] 81 L. T. 782; 64 J. P. 215.

not reproduced (*o*). It is clear that the overseers must demand no more than the precise sum due (*p*), even by the fraction of a farthing (*q*), though apparently they may demand less and correct the mistake afterwards by a fresh demand of the balance (*r*). Apparently the justices who were asked to grant the distress warrant would have jurisdiction to determine the precise amount due, though, if the summons claimed too much, it must be dismissed (*s*). It is believed that in such a case, in practice, the difficulty would be got over by a dismissal of the summons, coupled with an intimation that in the opinion of the justices a smaller sum named appeared to be due. It is hardly likely, that if this were done, a fresh demand and summons would be necessary to enforce payment.

What is a single rateable hereditament.—Where one and the same person occupies property, the several parts of which are capable of being occupied separately by several occupiers, it is frequently important, but very difficult, to determine whether such property should be treated as one rateable hereditament, or several. Suppose that six buildings in a row are used as warehouses, and are occupied by one and the same person: as long as they are all in full use, it makes no difference to the occupier whether he is rated for one large or six smaller buildings, if the rateable value of the whole be unaltered. But suppose that his business declines so that he only uses four of the six buildings: if those buildings are rated as separate rateable hereditaments, he is rateable only for the four which are used; if the six are rated as one hereditament, he is rateable for the whole, though he does not make full use of it (*t*). In the case of "agricultural land," as defined by s. 9 of the Agricultural Rates Act, 1896 (*u*), the value of the agricultural land must be stated in the valuation list separately from that of any building or other hereditament (*v*); but this section does not determine the question whether all the buildings (or all the plots of agricultural land) occupied by the same person are to be treated as one rateable hereditament or as many (*y*).

In order to claim a separation in the rating, it is of course essential to show that the parts to be separately rated are capable of being separately occupied; but it seems clear that the fact that the several parts are capable of separate occupation does not

(*o*) See the Poor Rate Assessment and Collection Act, 1869, s. 16, in Appendix II.

(*p*) *Hurrell v. Wink* (1818), 8 Taunt. 369.

(*q*) *Morton v. Brammer* (1860), 8 C. B. (N.S.) 791.

(*r*) *R. v. Blenkinsop*, [1892] 1 Q. B. 43.

(*s*) *Per* CHANNELL, J.: *Davis v. Woodfield*, *supra*, p. 55.

(*t*) *R. v. Aberystwith* (1808), 10 East, 354, *supra*, p. 14.

(*u*) See Appendix II., *infra*.

(*v*) See s. 5 of that Act, in Appendix II.

(*y*) The Parochial Assessments Act, 1836, s. 1 (set out in Appendix II.), requires every rate to show the "net annual value of the several hereditaments rated thereunto," but the Act does not define what is a "hereditament." See also note (*q*), *infra*, p. 53.

necessarily involve a separation of the assessment when all are occupied together. In the following paragraphs are given instances in which the question whether an assessment should be divided was, or might have been, raised.

Warehouses held with docks.—In *Mersey Docks v. Birkenhead* (z), the appellants were occupiers of docks, warehouses, and other buildings connected with the docks, and were rated separately for nine items, Nos. 1—8 being the warehouses and buildings, and No. 9 the docks. Under the special Acts, the docks and works were to be deemed to constitute one estate under one management. The expenses of working and maintaining the whole of the property rated were greater than the income derived from that property; but it was admitted, for the purposes of the case, that the first eight items of the rate were respectively (a) capable of separate beneficial occupation apart from the proximity to and connection with the docks comprised in the ninth item, and would be so capable if the docks were not in existence; and further, that the first eight items were respectively enhanced in value by reason of their proximity to the docks. The questions to be determined were (1) whether the first eight items were properly rated separately and apart from the docks; and (2) whether, if separately rated, the first eight items should be rated as enhanced in value by their proximity to and connection with the docks. The Queen's Bench answered both questions in the affirmative.

Unfortunately, the facts are very inadequately stated in the case above referred to, but it is probably correct to assume that some of the items separately rated were not physically or structurally connected with the docks, or with each other, and they may even have been some considerable distance apart. The only ground for contending that premises so separated ought not to be separately rated was the fact that the premises were in the hands of one occupier, and managed under one control. But it is believed that such a reason (taken by itself) has never been held sufficient for rating as one hereditament, premises which *primâ facie* are rateable as several hereditaments.

Buildings let in flats: agricultural land.—In the *Westminster Chambers Case* (b), it was held that each of a large number of sets

(z) (1873), L. R. 8 Q. B. 445. In this case the docks were (rightly or wrongly) admitted to be not rateable because they produced no profit; but as to the correctness of this admission, *vide infra*, pp. 132—134.

(a) This finding apparently means that each of the eight was capable of being separately occupied; but the main point in the case was whether the eight items (taken as a whole) ought to be rated separately from the ninth, and it was not necessary to consider whether the eight items were rightly rated as eight items, or ought to have been still further sub-divided.

(b) *R. v. St. George's Union* (1871), L. R. 7 Q. B. 90, *supra*, p. 29; see also *Allchurch v. Hendon Union*, [1891] 2 Q. B. 436, *supra*, p. 31.

of chambers constituted a separate rateable hereditament, but the ground of the decision was that the tenant (and not the landlord) of each set was the rateable occupier. This case, therefore, may throw light upon (but does not decide) the question whether, if the landlord be rateable, he is rateable as the occupier of one hereditament or of many (*c*).

It seems clear that the question, whether a building let out in parts to several tenants constitutes one "house" or not, may be answered differently according to the nature of the Act or document in which the word is used (*d*).

In *Rawlence v. Hursley Union* (*e*), a valuer who was employed to make a valuation list, made one in which (where several parcels of land were occupied by the same person) a rateable value for the aggregate of the several parcels was given, but no separate valuation of each item was stated. It was held that such a valuation list sufficiently complied with s. 4 of the Union Assessment Committee Amendment Act, 1864 (*f*), which requires the valuer to make a valuation "showing the particulars of the several hereditaments comprised therein, and the amounts at which he has valued the same respectively"; and that a separate valuation of each field was not necessary. This decision implies that a person may be rated in one lump sum for several fields (*g*), for if this were not so, a valuation list made in the form above stated would be invalid and useless to the rating authority. It seems to follow from this decision that although property may be capable of being separately occupied in parts which are, when so occupied, separate hereditaments, it is not necessarily wrong (when the several parts are occupied by one and the same person) to rate him for that property, as if it were one rateable hereditament.

Railway stations and lines: land covered with water.—In *North Eastern Rail. Co. v. York Union* (*h*), the railway company were rated, in one lump sum, for the whole of the York station (including the railway hotel and refreshment rooms, a number of

(*c*) In *Att.-Gen. v. Mutual Tontine Westminster Chambers Association* (1876), 1 Ex. D. 469, which related to the same chambers as *R. v. St. George's Union* (*supra*), it was held that, for the purposes of inhabited house duty, each block (containing several sets of chambers) must be treated as one dwelling-house; but see now 41 & 42 Vict. c. 15, s. 13.

(*d*) See *Grant v. Langston*, [1900] A. C. 383 (relating to inhabited house duty); *Weatherill v. Cantlay*, [1901] 2 K. B. 285; *Kyffin v. Simmons*, [1903] 67 J. P. 227 (relating to byelaws under the Public Health (London) Act, 1891); *Kimber v. Adams*, [1900] 1 Ch. 412; and *Iford Park Estate v. Jacobs*, [1903] W. N. 126 (construction of covenants relating to building plots).

(*e*) (1877), 3 Ex. D. 44.

(*f*) 27 & 28 Vict. c. 39, set out in Appendix II.

(*g*) It is to be noticed that the form of rates scheduled to the Parochial Assessments Act, 1836 (set out in Appendix II.), and Forms X. and Y. scheduled to the Agricultural Rates Order, 1896, made under the Agricultural Rates Act, 1896 (see Appendix II., *infra*), confirm the view that several fields may be rated together as one hereditament, and they are frequently so rated in practice.

(*h*) [1900] 1 Q. B. 733; *Ryde and Konstan's Rat. App.* (1894—1904), 230.

engine sheds, carriage and waggon shops, and similar buildings, and electric light works, a pumping station, coal yards and warehouses), together with running lines and sidings. It was admitted (and, as the court seemed to think, rightly admitted) by the respondents, that the hotel and refreshment rooms should have been rated separately, but it was denied that any further sub-division was necessary. It was found, as a fact, that various parts might be occupied separately from the railway, but that, as at present laid out, they were only adapted for use by the railway company themselves. On these facts, it was held that no further sub-division of the property in the rate was necessary.

This decision must, of course, be construed with reference to the special facts of the case, but it seems to establish the general rule that, in rating a railway company, the running line need not be entered in the rate separately from the sidings or station, although the method of valuing the line is entirely different, as will be seen when we come to deal with railways.

It has been held at quarter sessions (*i*), that for the purposes of the poor rate, the overseers are not bound (when dealing with the property of a dock company) to value "land covered with water" separately from the rest of the property; although, for the purposes of the general district rate under s. 211 of the Public Health Act, 1875, "land covered with water" is entitled to a three-fourths exemption, and, therefore, must be separately rated.

(i) *Corporation of Kingston-upon-H ll v. Sculcoates Union* (1890), 54 J. P. 281.

CHAPTER III.

RATING OF OWNERS INSTEAD OF OCCUPIERS.

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Preliminary.—Under the statute 43 Eliz. c. 2, the occupier and not the owner is made liable to the rate. This liability is, of course, unaffected by any contract between landlord and tenant, whereby the former may undertake to pay the rate. The occupier remains liable under the statute, as between himself and the overseers, although he may have a remedy over, under his contract, against the landlord. But modern Acts have, in one or two instances, made the owner primarily liable, either in addition to, or in substitution for, the occupier.

The Acts dealing with the special cases of ambassadors' houses (*a*), allotments (*b*), and advertising stations (*c*) are separately dealt with below, and it is desirable first to consider an Act of more general application (*d*).

The Poor Rate Assessment and Collection Act, 1869.—This Act (*e*), by s. 6, repeals the Small Tenements Act, 1840 (*f*), and so much of any local statute as relates to the rating of owners instead of occupiers, so far as they apply to any poor rate made after the Act of 1869 came into operation. And it has been held (*g*) that the Act of 1869 (either alone or as combined with certain earlier Acts) has impliedly repealed s. 19 of the Poor Relief Act, 1819 (*h*), under which the owners of houses of small rateable value might be rated instead of the occupiers. In effect,

(*a*) *Infra*, p. 71.

(*b*) *Infra*, p. 66.

(*c*) *Infra*, p. 69.

(*d*) The recovery of rates on tithe rentcharge is governed by the Tithe Act, 1891 (54 & 55 Vict. c. 8), s. 6.

(*e*) 32 & 33 Vict. c. 41; see Appendix II., *infra*.

(*f*) 13 & 14 Vict. c. 99. That Act (which applied also to highway rates) was repealed *in toto* by the Statute Law Revision Act, 1875.

(*g*) *West Ham v. Fourth City Mutual Building Society*, [1892] 1 Q. B. 654.

(*h*) 59 Geo. 3, c. 12 (Sturges Bourne's Act).

therefore, the Act of 1869 is the only general Act (apart from the Acts dealing specially with ambassadors' houses, allotments and advertising stations) under which owners are rateable to the poor rate instead of occupiers (*i*).

The Poor Rate Assessment and Collection Act, 1869, contains provisions of three kinds, which must be distinguished: (1) By s. 1, it enables the occupier of *any* hereditament (*k*) let to him for a term not exceeding three months to deduct the poor rate (*l*) paid by him from his rent; (2) by s. 3, the owner of any hereditament (within the limits of rateable value specified in the section), whether it includes a dwelling-house or not, may agree with the overseers to pay the rates whether the hereditament be occupied or not, and may be allowed a commission; (3) by s. 4 (1), the vestry (*m*) may *order* the owners of all rateable hereditaments in the parish, which include a dwelling-house and come within the specified limits of rateable value, to be rated in lieu of the occupier, and under sub-s. (2) the owner may *agree* to pay rates, whether the house be occupied or not. The main distinctions to be noticed between these three sets of provisions are: Under s. 1 the occupier remains (as before) the *only* person liable to pay the rate; under s. 3 the occupier remains liable as long as the premises are occupied, and, by force of the agreement, the overseers have the benefit of the superadded liability of the owner, whether the premises are occupied or not (*n*); under the first sub-section of s. 4 the owner becomes liable, instead of the occupier (*o*), so long as the premises are occupied; and if there is an agreement under sub-s. (2) of s. 4, the owner may be liable for the rates (subject to a deduction for commission) whether the premises are occupied or not; and s. 3 and s. 4 are mutually exclusive, so that where one section is in force the other cannot be (*p*).

Owners becoming liable to pay rates may forfeit their commission, or abatement, by delaying to pay the rates (*q*). The

(*i*) There may possibly be some *local* Acts passed subsequently to 1869 under which owners are rateable. It is submitted that s. 7 of the Representation of the People Act, 1867 (so far as it prohibits the rating of owners), must be regarded as impliedly repealed by the Poor Rate Assessment and Collection Act, 1869. The liability of owners to be rated to the general district rate under s. 211 of the Public Health Act, 1875, is not dealt with in this volume.

(*k*) No matter how great the value may be.

(*l*) The term "poor rate" is specially defined in s. 20 of the Act: see Appendix II., *infra*.

(*m*) The powers of the vestry are, or may be, now vested in some other body: *vide infra*, p. 62.

(*n*) *Norwood Overseers v. Salter*, [1892] 2 Q. B. 113.

(*o*) But under s. 12 the rate may be recovered (subject to special restrictions) from the occupier, who may deduct the rate from his rent. The limitation imposed by s. 2 on the amount recoverable may also have to be considered. Proceedings may also be taken against the owner under s. 11. In *Norwood Overseers v. Salter*, *supra*, it appears to have been held by COLLINS, J., that s. 11 applies to cases under s. 3 as well as under s. 4. See [1892] 2 Q. B., at p. 131.

(*p*) *Janes v. Mayor, etc. of Woolwich*, [1903] Ryde and Konstam's Rat. App. (1894—1904), 333.

(*q*) See the Poor Rate Assessment and Collection Act, 1869, s. 5, in Appendix II.

abatement takes effect upon the rate, and not upon the valuation list, so that the full rateable value must be entered in the list (*r*).

Transfer of powers of vestry under Poor Rate, etc., Act, 1869.

—By s. 6 of the Local Government Act, 1894 (*s*), the powers, duties, and liabilities of the vestry of a rural parish (with certain exceptions not now material) are transferred to the parish council, if there is one; and by s. 19, the same powers, in a rural parish not having a parish council, are transferred to the parish meeting.

With reference to parishes other than rural parishes (*i.e.*, parishes in urban districts, county boroughs, and the metropolis), the Local Government Act, 1894, of itself does not transfer the powers of the vestry, but by s. 33 (1), (6), the Local Government Board may make an order conferring on the district council or other representative body certain powers of overseers, parish councils, etc.; and by s. 34, in an urban district (*t*), that order or some subsequent order may confer on the district council, or some other representative body, the powers of the vestry under ss. 3 and 4 of the Poor Rate Assessment and Collection Act, 1869 (*u*).

Limits of value of hereditaments for which owners may be rated.—The third section of the Poor Rate Assessment and Collection Act, 1869, applies “in case the rateable value of any hereditament does not exceed 20*l.* if the hereditament is situate in the ‘metropolis’ (*x*), or 13*l.* if situate in any parish wholly or partly within the borough of Liverpool, or 10*l.* if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or 8*l.* if situate elsewhere.” And s. 4 applies to “all rateable hereditaments [in which a dwelling-house is included] to which s. 3 of this Act extends.”

In *Norwood Overseers v. Salter* (*y*), an order of the vestry had been made under s. 4 (directing the overseers to rate the owners), and an owner had made an agreement under sub-s. (2) of that section in respect of a house, which at the date of the agreement

(*r*) *Overseers of Sunderland v. Sunderland Union* (1865), 34 L. J. M. C. 121.

(*s*) 56 & 57 Vict. c. 73: see Appendix II., *infra*.

(*t*) But, apparently, not in a county borough or the metropolis: see Ryde's Local Government Act, 1894, pp. 124, 125.

(*u*) It is not clear why these powers of the vestry are specially mentioned in s. 34 of the Local Government Act, 1894; *primâ facie*, at least, they are included among the powers of the parish council, which are dealt with in s. 33 of the same Act.

(*x*) As defined by the Metropolis Management Act, 1855: see s. 20. Under a local Act (51 & 52 Vict. c. clxxix.), s. 84, “s. 3 of the Poor Rate Assessment and Collection Act, 1869, is in force within the parish of West Ham as if such parish were situate in the metropolis.” But this section was repealed by s. 59 of the West Ham Corporation Act, 1900 (63 & 64 Vict. c. cxxlvi.), which enacts that “s. 3 of the Poor Rate Assessment and Collection Act, 1869, shall, in the case of hereditaments situate in the parish of West Ham, extend only to those hereditaments of which the rateable value does not exceed 13*l.*”

(*y*) [1892] 2 Q. B. 118; 61 L. J. M. C. 193; 67 L. T. 376; 56 J. P. 535; 8 T. L. R. 568.

was within the limit of rateable value prescribed by s. 3. Subsequently a new valuation list was made, in which the rateable value of the house was raised above the prescribed limit. In the first rate based on the new valuation list, the overseers rated the occupier, who contended that the owner should have been rated pursuant to the order of the vestry. The overseers contended that the rate must necessarily follow the valuation list (*z*), and that the rateable value, as it appeared therein at the date when the rate was made, must determine whether the house fell within the prescribed limits of rateable value. Two judges of the Queen's Bench Division agreed with this construction so far as orders under s. 4 were concerned. COLLINS, J., said (*a*): "The order [under s. 4] is ambulatory as to all rateable hereditaments of the class described in s. 3. That order is one which applies only to such hereditaments as at the time of making the rate are below the prescribed value." But the court were divided on the question whether the rateable value at the date of the rate determined whether the hereditament was within the prescribed limits of value in dealing with agreements under s. 3. HAWKINS, J., said: "In my opinion the true and reasonable view to take of s. 3 is that it permits such agreements to be made in respect of any house or houses so long as it, or they, do not exceed the limited rateable value, but no others; and that agreements under s. 3 should be construed as having application to the hereditaments mentioned in them, only so long as such hereditaments continue of a rateable value not exceeding the limited amount" (*b*). It is submitted that this represents the better opinion. Apart from the weighty reasons given by HAWKINS, J., it may be noticed that the effect of the judgment of COLLINS, J., on this point is that s. 4 applies to a class of hereditaments different from that to which s. 3 applies, although the scope of s. 4, by express reference to s. 3, extends "to all hereditaments to which s. 3 extends."

Agreements under s. 3 of the Poor Rate Assessment and Collection Act, 1869.—The agreement must be in writing (*c*), and must apparently (in most, if not in all cases) bear a sixpenny stamp (*cc*). The overseers may agree with some, even though they cannot agree with all, of the owners of hereditaments of the prescribed value in the parish; and they may make an agreement which does not relate to *all* of the houses (of the prescribed value) belonging to the same owner. Neither under s. 3, nor under s. 4,

(*z*) See s. 28 of the U. A. C. Act, 1862, in Appendix II.

(*a*) [1892] 2 Q. B., at p. 132.

(*b*) See [1892] 2 Q. B., at p. 128.

(*c*) The absence of a written agreement, or any informality or defect in the agreement, does not affect any qualification or franchise: see the Assessed Rates Act, 1879 (42 & 43 Vict. c. 10), passed in consequence of *Bennett v. Atkins* (1878), 4 C. P. D. 80.

(*cc*) See p. 64, note (*g*), as to notices under s. 4.

can the parish authorities *compel* an owner to pay poor rates in respect of property while it is unoccupied (*d*).

Rating of owners under s. 4 of the Poor Rate, etc., Act, 1869.—The proviso to s. 4 prevents the scope of the section from extending to any hereditament (within the prescribed value) “in which a dwelling-house shall not be included.”

The first sub-section enables the vestry (*e*) to order that the owners of *all* hereditaments (of the specified value (*f*) and description) within the parish shall be rated, and the order may be rescinded in the way prescribed by sub-s. (3). No order can be made which applies to less than *all* such hereditaments in the parish.

When an order has been made under s. 4 (1), any individual owner, under s. 4 (2), may give notice (*g*) that he is willing to pay rates, whether his houses are occupied or not, but such notice must apply to “*all* such rateable hereditaments of which he is the owner.” Apparently the overseers must allow some further abatement on receipt of a notice under s. 4 (2), though they are not bound to allow a further 15 per cent.

It would probably be held that no special formalities are to be observed in making an order under s. 4, provided the intention be clear (*h*). In *Junes v. Woolwich Corporation* (*i*), it was held that a resolution “that all agreements with owners be made under s. 3” was sufficient to rescind an order made under s. 4, without specially mentioning the order, because the two sections could not both be in operation at once in the same parish.

Who is the “owner” under the Act of 1869.—By s. 20 of the Poor Rate Assessment and Collection Act, 1869, “the word ‘owner’ shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent.” It is believed that the practice of rating an agent is very rarely adopted. Probably the definition refers to the agent for the time being; it is submitted that an agent against whom any order

(*d*) The case is different with regard to the rating of owners to the general district rate under s. 211 (1) (a) of the Public Health Act, 1875: see *R. v. Barclay* (1882), 8 Q. B. D. 486.

(*e*) Or, in some cases, the parish council or some other authority: see p. 62.

(*f*) As to the limit of value, see *Norwood Overseers v. Salter*, [1892] 2 Q. B. 118, *supra*, p. 63.

(*g*) The Law-Officers have advised that this notice is not an agreement, and is not liable to stamp duty; see 28th Annual Report of Local Government Board (1898—99), p. xevii.

(*h*) *Cf. Bavin v. Hutchinson* (1862), 31 L. J. M. C. 229.

(*i*) [1903] Ryde and Konstan's Rat. App. (1894—1904), 333.

is made (or ought to be made) cannot escape liability by resigning the agency (*k*).

In *Re Allen* (*l*), where an order had been made under s. 4 of the Poor Rate Assessment and Collection Act, 1869, that owners should be rated, and a married woman (the owner of certain houses) had given notice under sub-s. (2), that she was willing to be rated, whether the houses were occupied or not, it was held that (on making default in payment) the rates were recoverable against her by distress and imprisonment, and that she had made no contract with the overseers, so as to bring the case within s. 1 of the Married Women's Property Act, 1882 (*m*). It must, however, be noticed that although the liability to be rated for the houses, *so long as they were occupied*, did not depend upon any "contract," or voluntary act of the owner, but upon a compulsory order of the vestry under s. 4 (1) of the Act of 1869, the liability to pay rates for houses *while unoccupied* did depend upon the notice voluntarily given under sub-s. (2). This point, whatever be the effect of it, seems not to have been fully appreciated in the judgments in *Re Allen*.

(*k*) Compare *Broadbent v. Shepherd*, [1901] 2 K. B. 274.

(*l*) [1894] 2 Q. B. 924.

(*m*) 45 & 46 Vict. c. 75.

CHAPTER IV.

ALLOTMENTS, ADVERTISING STATIONS, AMBASSADORS'
HOUSES.

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Allotments.—Under the Allotments Act, 1887 (*a*), the sanitary authority (*i.e.*, now an urban or rural district council), were given power to acquire land for allotments, and s. 7 (2) enacts as follows :

“ The sanitary authority shall, for the purposes of all rates, taxes, and tithe rentcharge, be deemed to be the occupiers of the allotments which are let, but they shall cause the sums from time to time paid by way of rates, taxes, and tithe rentcharge in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the said tenant in respect of such allotment, and shall be deemed to be part of such rent, and be recoverable accordingly: Provided always that for the purposes of the parliamentary franchise . . . the tenants shall be deemed to be the occupiers, and such rates to have been paid by them, notwithstanding the provisions hereinbefore contained ” (*b*).

Under the Local Government Act, 1894 (*c*), land for allotments may be purchased by the county council : and any land so purchased shall, under s. 9 (14), “ be assured to the parish council, and in that case ss. 5—8 of the Allotments Act, 1887 [including the section above set out], shall apply as if the parish council were the sanitary authority.” By s. 10 of the Local Government Act, 1894, the parish council have power to hire land for allotments ; and by s. 10 (6), “ ss. 5—8 of the Allotments Act, 1887 [with exceptions not now material], shall apply to any allotment hired by a parish council in like manner as if that council were the sanitary authority and also the allotment managers.”

The partial exemption of allotments, as being “ agricultural land,” is considered in Chapter X., *infra*, p. 115.

(*a*) 50 & 51 Viet. c. 48.

(*b*) Compare the Poor Rate Assessment and Collection Act, 1869, s. 7, in Appendix II., *infra*.

(*c*) 56 & 57 Viet. c. 73, s. 9.

Advertising hoardings.—The rating of advertising hoardings, and buildings or land used for exhibiting advertisements, has been specially dealt with by the Advertising Stations (Rating) Act, 1889 (*d*). The cases decided before the passing of that Act have something more than a mere historical interest, because they illustrate what is meant by “occupation” in connection with the law of rating (*e*).

It seems clear that before the Advertising Stations (Rating) Act, 1889, was passed, if the possibility of using land or buildings for the purpose of advertising increased the rent which a tenant might be expected to give for such land or buildings, that increase in rent was to be taken into account in estimating the net annual (or rateable) value under s. 1 of the Parochial Assessments Act, 1836 (*f*). The additional value attaching to a corner house in a prominent position, in consequence of the opportunities it offers for advertising, must (it is submitted) be taken into account just as much as the additional value attaching to the same house in consequence of the opportunities it offers for doing a large retail business. Anything which would increase the rent must increase the rateable value. But this is not the question on which the cases have been decided. The point to be determined was not whether the additional value attributable to the exhibition of advertisements formed part of the rateable value, but who was the person to be rated for that additional value. If the advertising contractor was rated, he denied liability on the ground that he was not in occupation of land, but had merely a licence to enter and use it (*g*); if the occupier of a building was rated for advertisements affixed to the outside of the building, he denied that the use of the outside constituted part of his occupation.

Willing's Case.—In *R. v. St. Pancras (h)*, an attempt was made to rate the appellant, Mr. Willing, an advertising contractor, in respect of two advertising stations, or hoardings. One of these was erected in front of a suburban villa, inhabited only by a caretaker, and advertised to be let or sold. The hoarding was erected by the appellant, being bolted to the wall in front of the house, and supported by struts run into the ground behind the wall. The hoarding had been put up under an agreement made with a former lessee of the house, upon terms which did not appear, and was kept up under an agreement with the owner, contained in letters in which the appellant agreed to pay “rent for liberty to fix

(*d*) 52 & 53 Vict. c. 27: see App. II., and p. 69, *infra*.

(*e*) *Vide supra*, pp. 43—46.

(*f*) See *R. v. St. Pancras (Willing's Case)* (1877), 2 Q. B. D. 581, at pp. 587, 588.

(*g*) The difficulty of distinguishing between a licence to use land for an advertising station and a yearly tenancy is illustrated by *Wilson v. Tavenor*, [1901] 1 Ch. 578: see also *Kerrison v. Smith*, [1897] 2 Q. B. 445.

(*h*) (1877), 2 Q. B. D. 581; 46 L. J. M. C. 243; 37 L. T. 126; 41 J. P. 662.

advertising boards," and "to give up possession on 24 hours' notice." The second hoarding was erected by the appellant in a similar way, in front of a house which was being rebuilt, and which did not belong to the appellant; he had obtained permission to use the place for advertising purposes, and had no further rights over the premises. It was held that the appellant was not rateable in respect of either hoarding, on the ground that he was not in occupation of the land, but had merely a licence to use it (*i*).

Other cases decided before the Advertising Stations (Rating) Act.—In *Taylor & Co. v. Overseers of Pendleton* (*k*), on facts very similar to those in *R. v. St. Pancras* (*l*), the Queen's Bench held the advertising contractors to be rateable as occupiers of land. Two advertising stations were in question. As to the first, the owners of land who were timber merchants, by an agreement in writing, agreed to let to the appellants (who were advertising agents) at a yearly rent for a term of seven years an advertising station forming the wall of a timber shed, the appellants undertaking to pay all rates and taxes. The shed was used by the timber merchants for storing timber. In the second case, the owners of land, by an agreement in writing, allowed the advertising agents "the privilege of erecting an advertising hoarding," and of removing an existing wall for that purpose; the agreement was to be in force for a term of three years, at a yearly rent. The advertising agents (the appellants) had removed the wall and erected in its place a hoarding, supported by wooden posts and stays let into the ground; the land behind was waste ground. It was held, as to both hoardings, that the appellants were rateable as occupiers. As to the second hoarding, WILLS, J., said (*m*) :

"No doubt the terms used are in favour of the view that it was intended to grant only a licence or privilege, and not an occupation. But if the so-called privilege itself amounts to an occupation, that privilege is rateable. Though he has called it 'the privilege of erecting a hoarding,' the landlord has in effect granted the right to the exclusive occupation of the soil occupied by the erection" (*n*).

It is remarkable that in the judgments in *Taylor & Co. v. Overseers of Pendleton* (*ubi supra*), no notice is taken of *Willing's Case* (*o*), which is not easily distinguishable. Reference was made to *Shaw, Ashton and Thorpe v. Salford* (*p*), as showing that where posts were let into the ground, the advertising contractor would be

(*i*) An extract from the judgment is set out *supra*, p. 10.

(*k*) (1887), 19 Q. B. D. 288; Ryde's Rat. App. (1886—1890), 276.

(*l*) (1877), 2 Q. B. D. 581, *supra*, p. 67.

(*m*) Ryde's Rat. App. (1886—1890), at p. 282.

(*n*) Cf. the dictum of Lord DAVEY, in *Holywell Union v. Halkyn District Mines Drainage Co.*, [1895] A. C. 117, at p. 131. "An easement may be of such a character as involves the occupation of land for its exercise." See also pp. 39, 40, *supra*.

(*o*) *R. v. St. Pancras* (1877), 2 Q. B. D. 581, *supra*, p. 67.

(*p*) A note of this case, which is not elsewhere reported, may be found in 51 J. P. 73.

rateable, but where boards were merely fastened to the end of a house, he would not be rateable.

The Advertising Stations (Rating) Act, 1889.—This Act (*q*) was passed two years after the decision of *Taylor & Co. v. Overseers of Pendleton* (*r*), and was apparently passed to meet the difficulties disclosed by that case and the other cases therein referred to. It has been suggested that the Act leaves untouched the liability of the advertising contractor as an occupier of land, if the rights which he exercises amount to occupation; and that the Act imposes an additional (or alternative) liability on some other person. But it is not easy to support this contention, and it is safer to assume that the only person who can be rated in respect of advertising stations is the person liable under the Act.

By s. 3, "Where any land is used temporarily (*s*) or permanently for the exhibition of advertisements, or for the erection of any hoarding, frame, post, wall, or structure used for the exhibition of advertisements but not otherwise occupied, the person who shall permit the same (*t*) to be so used, or (if he cannot be ascertained) the owner (*u*) thereof, shall be deemed to be in beneficial occupation of such land or part thereof, and shall be rateable in respect thereof to . . . all local rates, according to the value of such use as aforesaid." Section 3 applies to a hoarding erected on the highway in front of buildings in course of construction (*x*).

By s. 4, "Where any land or hereditament occupied for other purposes, and rateable in respect thereof (*y*), . . . is used temporarily (*z*), or permanently for the exhibition of advertisements, or for the erection thereon or attachment thereto of any hoarding, frame, post, wall or structure, used for the exhibition of advertisements, the gross and rateable value of such land or hereditament shall be so estimated as to include the increased value from such use as aforesaid."

By s. 5, where under any local or general Act (*a*), any corporation, vestry, etc., grant a licence for the temporary erection of any

(*q*) 52 & 53 Vict. c. 27: see Appendix II.

(*r*) (1887), 19 Q. B. D. 288; Ryde's Rat. App. (1886—1890), 276, *supra*, p. 68.

(*s*) This word is apparently inserted with reference to the decision in *Willing's Case*, *R. v. St. Pancras* (1877), 2 Q. B. D. 581 (*supra*, pp. 10, 20), that permanence is an essential element in occupation.

(*t*) This word refers to the word "land," and not to "hoarding," etc. See *Shelly v. Dillon*, [1892] 30 L. R. Ir. 304, at p. 314.

(*u*) The term is defined in s. 2: see Appendix II., *infra*.

(*x*) *Chappell v. Overseers of St. Botolph*, [1892] 1 Q. B. 561; Ryde's Rat. App. (1891—1893), 286, *infra*, p. 71.

(*y*) These words show that hoardings cannot be rated if erected on land which is occupied, but exempt from rateability, *e.g.*, as being Crown property, or exempt under any special statutory exemption.

(*z*) See note (*s*), *supra*.

(*a*) See, for example, the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), s. 162; 57 Geo. 3, c. xxix. (Michael Angelo Taylor's Act), s. 75; and the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 122.

hoard, gantry, or other structure upon or over part of the highway, or upon or over any land, the property of the corporation, vestry, etc., such corporation, vestry, etc., may include in such licence a condition prohibiting the affixing of advertisements to such hoard, etc., or sanctioning the affixing of advertisements on payment of such sum, and on such conditions as the corporation or vestry, etc., may determine. Any payments received under the section are to be applied in aid of the highway rate.

It must be noticed that this section deals with licences to do two different things: (1) the licence to erect a hoarding, and (2) the licence to use it for advertising. The sum paid (if any) for the latter licence seems to be closely analogous to the duty paid for a public-house licence. It forms no part of the rent, and therefore (in calculating the rateable value) it must not be added to the sum paid to the landowner for the right to erect the hoarding: and if, by the bargain between the advertising contractor and the landowner, the latter undertakes to pay the local authority the duty charged for the licence, the sum so paid must be deducted from the sum which the landowner receives from the contractor. Further, if the landowner pays the rates out of the total sum paid to him by the advertising contractor, a deduction from that total sum must be made in respect of the rates, in order to arrive at the rateable value. Thus, if after making the necessary deductions (if any) for repairs, renewals, and insurance, the sum paid by the advertising contractor is 25s., and the rates amount to 5s. in the pound, the rateable value is only 1*l*. As to the repairs: if the advertising contractor undertakes the burden of keeping the hoarding in repair, no deduction for repairs ought to be made from the rent paid to the landowner, because that rent goes into his pocket as a net sum; and the advertising contractor, in considering what rent he will pay, has (presumably) taken into account the expenses of maintenance. But if the advertising contractor erects the hoarding for himself, the rent which he pays is of the same nature as a ground rent, and something may fairly be added for interest on the cost of erecting the hoarding, if that hoarding is (as must often be the case) so fixed to the ground as to form part of the rateable hereditament; for it is obvious that an advertising contractor would give a higher rent for an advertising station if the hoarding were already erected, than he would give if he had to erect the hoarding for himself at his own expense (*b*).

Cases decided after the Advertising Stations (Rating) Act, 1889.—Although this Act was passed to get rid of difficulties, it is not always easy to determine who is the right person to be rated

(*b*) The rating of advertising stations on the lines or stations of railway companies is discussed in Chapter XIV., *infra*, p. 199.

under it. In *Chappell v. Overseers of St. Botolph* (c), a hoarding was erected on the public highway in front of land vested in the Postmaster-General. The appellant (who was rated) was the builder employed to erect buildings for the Postmaster-General, and by his contract covenanted to maintain the hoarding, which had been already erected (by other persons) before the making of the appellant's contract. The appellant let to advertising contractors the use of the hoarding for affixing advertisements at a monthly rent. It was contended for the appellant that the person rateable under s. 3 was the person who permitted the "land" to be used; that this permission was given either by the Postmaster-General, who owned the soil of the highway, or by the highway authority whose licence had to be obtained for the erection of the hoarding thereon. But it was held by the Queen's Bench Division that the appellant was rateable (d). In this case no suggestion was made that the advertising contractors ought to have been rated instead of the appellant, as the persons who permitted the hoarding (which might be regarded as part of the land) to be used for the exhibition of advertisements. But in *Burton v. St. Giles and St. George, Bloomsbury* (e), on facts similar to those in *Chappell v. Overseers of St. Botolph*, it was decided that the advertising agent was not rateable.

In *Shelly v. Dillon* (f), an Irish case, an advertising contractor had, by permission of the occupier of a field, erected a hoarding on the wall of the field, and used the hoarding for the purposes of advertising. It was held that the occupier of the field, and not the contractor, was the person to be rated. It must be noticed that the case came under s. 4 of the Advertising Stations (Rating) Act, 1889.

Ambassadors' houses.—The Diplomatic Privileges Act, 1708 (g), which was declaratory of the law of nations (h), makes void "all writs and processes whereby the person of any ambassador or other public minister of any foreign prince," or the domestic servant of such ambassador and minister, may be arrested, and "his or their" (i) goods and chattels may be distrained, seized, or attached.

(c) [1892] 1 Q. B. 561; Ryde's Rat. App. (1891—1893), 286.

(d) In the course of the argument, MATHEW, J., said: "The man who permits the hoarding to be used for advertisements, permits the land which upholds the hoarding to be so used." See Ryde's Rat. App. (1891—1893), at p. 290.

(e) [1900] 1 Q. B. 389; Ryde and Konstam's Rat. App. (1894—1904), 27.

(f) [1892] 30 L. R. Ir. 304.

(g) 7 Anne, c. 12. The Act was passed in consequence of the arrest of an ambassador of Peter the Great for debt, and "to prevent the like insolencies in the future": see the preamble and s. 3. The history of the proceedings which led to the passing of the Act may be found in *Triquet v. Bath* (1764), 3 Burr. 1478, at p. 1480, and in Stephen's Commentaries, vol. 2, pp. 492, 493 (14th ed.).

(h) *Triquet v. Bath*, *supra*; *Viccash v. Becker*, 3 M. & S. 284, at p. 292; *Novello v. Toogood* (1823), 1 B. & C. 554; *Parkinson v. Potter* (1885), 16 Q. B. D. 152.

(i) The goods of the servant, as well as those of the ambassador, are (it is submitted) protected: see *Novello v. Toogood* and *Parkinson v. Potter*, *ubi supra*.

There being no means of enforcing the poor rate against ambassadors and their servants, it follows that the houses occupied by such persons cannot be effectively rated. The exemption attaches to the occupier, and not to the thing occupied, and it appears to offer a close analogy to the exemption of the Crown (*k*). A house belonging to a foreign ambassador and let to a stranger, being an ordinary British subject, would not be exempt, because there would be nothing to prevent a distress of the occupier's goods.

The exemption extends to an *attaché* (*l*) as well as to the ambassador himself, and it extends to a British subject, accredited to Great Britain as a member of an embassy, unless he has been received by the British Government upon the express condition that he shall be subject to the local jurisdiction of his own country (*m*). The exemption from process continues for such a reasonable time after a foreign ambassador has presented his letters of recall as is necessary to enable him to wind up the affairs of his embassy and to prepare to return to his own country; and it continues even though his successor has within that time been appointed (*n*).

The exemption does not extend to consuls (*o*).

In *Novello v. Toogood* (*p*), a British subject, who was engaged as a chorister in the Roman Catholic chapel attached to the Portuguese Embassy, lived in a house which he rented for himself, and part of which he let out in lodgings. It was held that he was liable to be rated for this house, and that his goods there were liable to be distrained. ABBOTT, C.J., said (*q*) :

"Whatever is necessary to the convenience of an ambassador, as connected with his rank, his duties, and his religion, ought to be protected; but an exemption from the burthens borne by other British subjects ought not to be granted, in a case to which the reason of the exemption does not apply. I do not say that the servant must reside in the ambassador's house. I do not say that he may not have a house fit and convenient for his situation as the servant of an ambassador, nor that the furniture in such a house will not be privileged. . . . In this instance the servant let a part of the house in lodgings. Such a house was not necessary for the personal convenience of the plaintiff [the servant]; and therefore could not be necessary for that of the ambassador his master" (*r*).

It must be noticed that s. 5 of the Diplomatic Privileges Act, 1708 (7 Anne, c. 12), prevents the Act from conferring any benefits on traders.

(*k*) See Chapter VII., and in particular the judgment of BLACKBURN, J., cited *infra*, p. 89.

(*l*) *Parkinson v. Potter* (1885), 16 Q. B. D. 152.

(*m*) *Macartney v. Garbutt* (1890), 24 Q. B. D. 368. This case is not quite consistent with the judgment of WILLS, J., in *Parkinson v. Potter* (1885), 16 Q. B. D. 152, at p. 162.

(*n*) *Musurns Bey v. Gadban*, [1894] 2 Q. B. 352.

(*o*) *Vireash v. Becker* (1814), 3 M. & S. 284.

(*p*) (1823), 1 B. & C. 554.

(*q*) 1 B. & C., at p. 562.

(*r*) See the remarks of WILLS, J., on this case in *Parkinson v. Potter* (1885), 16 Q. B. D. 152, at p. 162; and with those remarks compare *Macartney v. Garbutt* (1890), 24 Q. B. D. 368.

To meet the difficulty caused by the exemption of ambassadors and their servants, the Metropolitan Police Act, 1829 (10 Geo. 4, c. 44), s. 27, enacts that where any messuages, lands, tenements, or hereditaments within the metropolitan police district are occupied by any ambassador, etc., or by any other person not liable to the payment of poor rate, all money payable for the purposes of the police by the occupier of such messuages, etc., shall be paid by and recoverable from the landlord or owner, who shall for this purpose be deemed the occupier(s). Similar provisions as to other local rates are to be found in some local Acts (*t*).

(*s*) A similar provision as to land tax will be found in the Land Tax Act, 1797 (38 Geo. 3, c. 5), s. 46.

(*t*) See, for instance, 35 Geo. 3, c. 73, s. 190 (relating to the parish of Marylebone); 59 Geo. 3, c. xxxix., s. 77 (St. Pancras); 7 Geo. 4, c. exxi., s. 69 (St. George's, Hanover Square); 11 Geo. 4, c. x., s. 97 (St. Giles-in-the-Fields and St. George, Bloomsbury); 57 Geo. 3, c. xxix., s. 31 (Michael Angelo Taylor's Act); 5 Geo. 4, c. 100, s. 76 (Crown Estate in Regent's Park, Regent Street, etc.).

CHAPTER V.

DEFICIENCY IN RATES DURING CONSTRUCTION OF WORKS.

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The Lands Clauses Consolidation Act, 1845, s. 133.—This section (*a*), which is incorporated in most Acts authorising public improvements, as well as in Acts enabling trading companies to acquire land, enacts that “if the promoters of the undertaking become possessed by virtue of this or the special Act (*b*) . . . of any lands charged with the land tax, or liable to be assessed to the poor’s rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor’s rate, be liable to make good the deficiency in the several assessments for land tax and poor’s rate by reason of such lands having been taken or used for the purposes of the works ; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act.”

It is important to notice the nature of the liability created by this section. It does not render the “promoters of the undertaking” liable to be rated (*c*), and it is, therefore, wrong to enter their names in a rate (*d*). The promoters become liable to pay a sum of money, which is recoverable by action (*e*), and not (as is the case with rates) by application to justices for a distress warrant. In *Stratton v. Metropolitan Board of Works* (*f*), it was held that

(*a*) Set out in Appendix II.

(*b*) That is the Act incorporating the Lands Clauses Act.

(*c*) *Mayor, etc., of London v. St. Andrew, Holborn* (1867), L. R. 2 C. P. 574.

(*d*) This sentence must of course be read subject to any provision to the contrary in the special Act ; see, for example, *Overseers of St. Stephen, Coleman Street v. Great Northern and City Rail. Co.*, [1902] 66 J. P. 373 ; 50 W. R. 395 ; 18 T. L. R. 350.

(*e*) It was so recovered in all the cases cited below, with the single exception of *R. v. Metropolitan District Rail. Co.* (1871), L. R. 6 Q. B. 698, in which a case was stated after writ of mandamus without pleadings. The question whether a writ of mandamus should have been asked for, appears not to have been argued.

(*f*) (1874), L. R. 10 C. P. 76.

the overseers could in one action recover deficiencies for several years not previously demanded, and this, notwithstanding the fact that the parochial accounts for those years had been closed, and although the body of ratepayers had changed in the meantime, and new overseers had been appointed.

Local authorities carrying out street improvements or similar works, and having no pecuniary interest in the work they undertake, may be "promoters" within s. 133, and therefore liable under that section (*g*).

In *Vestry of St. Leonard, Shoreditch v. London County Council* (*h*), it was held that the section was incorporated into Parts I. and III. of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70).

In respect of what property the liability arises.—No liability arises in respect of property which at the time of the passing of the special Act was in the occupation of the Crown, and was therefore not rateable (*i*); but there is a liability in respect of property which was in its nature rateable, though not in fact rated because it was unoccupied (*k*). Where a railway company have bought houses in order to get rid of the opposition of the owners of such houses to the company's Bill, they cannot be heard to say that they became possessed of the houses otherwise than by virtue of their Acts, and that they are on that account not liable to make good the deficiency (*l*). Until the works are "completed and assessed" (the meaning of which phrase is considered below) the promoters are liable to make good the deficiency in respect of surplus lands even after they are sold, and apparently even after they are built upon and assessed. But this last point may tell in favour of the promoters, for the new assessments as they come into being must be set off against the aggregate of the old assessments (*l*), and if the new assessments are greater than those which they displace, there will be a surplus in respect of these items which will go to reduce the deficiency on other items.

The liability attaches even in respect of property which, when the works are completed, will not be liable to assessment, *e.g.*, on the ground that it will be dedicated to the public as a highway (*m*), and for this purpose we must read s. 133 of the Lands Clauses

(*g*) *Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303; and see *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (1887), 18 Q. B. D. 549; *Overseers of St. Leonard, Shoreditch v. London County Council*, [1895] 2 Q. B. 104.

(*h*) [1895] 2 Q. B. 104.

(*i*) *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76.

(*k*) *Overseers of Putney v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440.

(*l*) *Vide infra*, pp. 79, 80.

(*m*) *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 P. C. 76, cited above; *Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303; *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (1887), 18 Q. B. D. 549.

Consolidation Act, 1845, as though it said "until the works are completed, and *such parts of them as become assessable property are assessed*" (a). For unless the words are construed in this way, the effect of them is not to create a limitation of the liability, but to make it perpetual; since works consisting of a public highway never will be "completed *and assessed*."

Land or buildings beneficially occupied during construction of works.—Where the promoters become possessed under their special Act of land containing brick-earth or stone, which is used by them for the purpose of their undertaking, the land may become more valuable in their hands than it was before, and the question then arises whether the promoters are liable to be rated as occupiers at the enhanced value of the land, or are merely liable to pay rates "computed according to the rental at which the lands were rated at the time of the passing of the special Act." Although a contrary opinion has been expressed, the true view (it is submitted) is as follows:—Section 133 of the Lands Clauses Consolidation Act, 1845, leaves untouched the liability (if any) to be rated as the occupier of land under the Statute of Elizabeth, and to that liability adds a further liability to make good the deficiency (if any) in the rate by reason of land being taken or used for the purposes of the promoters' work. If, therefore, the promoters occupy land in such a way that they would be rateable under the Statute of Elizabeth, apart from s. 133 of the Lands Clauses Consolidation Act, 1845, there is nothing in the latter Act to exempt them. No doubt the sum at which the promoters are rated in respect of such land must be taken into account so as to reduce or wipe out the "deficiency" which arises in respect of other lands taken by the promoters in the same parish; but if the lands for which the company are rated are in one parish, and the deficiency arises in another, there can be no set-off.

A difficulty also arises where buildings, of a temporary or permanent character, are used during the construction of the works. Thus the promoters may erect dwellings for the workmen employed on the works, or an office for the engineer, or may lay down a tramway for the conveyance of materials. In distinguishing different kinds of cases, it may not be easy to draw the line, but extreme cases may be taken about which there can be little doubt. Suppose that the promoters are constructing a large reservoir, and build temporary huts for housing their workmen on land specially taken for the purpose, outside the site of the reservoir, and entirely separated from it by a highway, it must apparently be admitted that either the promoters or their workmen

(a) *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (1887), 18 Q. B. D., at p. 561; following *Stratton v. Metropolitan Board of Works*, *ubi supra*.

are rateable as occupiers of the huts. On the other hand, suppose that the promoters, in constructing a warehouse, use one of the rooms temporarily as a workshop for the carpenters engaged on the works, it would be hardly possible to contend that the promoters are rateable as beneficial occupiers of that particular room. These illustrations seem to suggest two propositions: (1) that a building capable of separate occupation apart from the works which are being constructed, may be rated if beneficially occupied; and (2) that where part of the works in course of construction is used beneficially, in the sense that its use saves the owners from expenses which without that use they must incur in constructing the works, the owners are not rateable for the part so used if that part cannot be occupied separately from the rest of the works. The second of these propositions seems to be supported by, and the first seems consistent with, the decision in *Tyne Coal Co. v. Wallsend Overseers* (o).

Duration of the liability.—The effect of s. 123 of the Lands Clauses Consolidation Act, 1845, is to fix a time when payments by promoters are to cease; but the liability “to make good the deficiency” may have disappeared, as a matter of fact, before that time, because the “deficiency” has been reduced to nothing (p). On the other hand, the “deficiency” may exist, as a matter of fact, after the time has arrived when all payments are to cease; and in this case the rest of the parish have to submit to a loss for which they have no remedy.* We must, therefore, consider two questions:—(1) How long are the promoters to remain liable? (2) How is the amount for which they are liable during that period to be ascertained?

The duration of the liability is fixed by the words “until the works shall be completed and assessed.” We have already considered the effect to be given to the words “and assessed” (pp). Where works (as in the case of a railway) extend into several parishes, the liability ceases in each parish as soon as the portion of the works in that parish is completed and (if assessable) assessed (q), even though the whole of the works in other parishes are not completed.

In *Stratton v. Metropolitan Board of Works* (r), which related to the construction of the Thames Embankment and other street improvements, it was held (in consequence of a clause in the special Act) that the liability came to an end when the streets and embankment were dedicated to the public, even though some

(o) (1877), 46 L. J. M. C. 185. *infra*, p. 389.

(p) *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (1887), 18 Q. B. D. 549, at p. 564.

(pp) *Supra*, pp. 75, 76.

(q) *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, decided on almost identical words in a special Act, overruling *R. v. Metropolitan District Rail. Co.* (1871), L. R. 6 Q. B. 698.

(r) (1874), L. R. 10 C. P. 76.

of the land taken (which was not thrown into the streets) remained unbuilt upon, and incapable of being assessed. But in *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (s), which related to street improvements, it was held that (in the absence of any such clause) the period of liability came to an end when the road and footway had been fully made, and the whole of the lands which had been taken and which might be liable to assessment had become assessable. The effect of this decision was that the corporation, as promoters, might be under a liability after they had executed all the structural works in making the new streets, and had sold, or granted leases of, the surplus lands, so that the delay of the purchasers or lessees of such lands, in erecting buildings and making the land assessable, might prolong the liability of the corporation after the corporation had parted with the control of the land. It must be noticed, however, that a similar decision (involving the same apparent hardship) had already been given in *Stratton v. Metropolitan Board of Works* (t); and further that the corporation could protect themselves by requiring a covenant from their vendees or lessees to bring the land into assessment within a reasonable time, or to indemnify the corporation. It may, perhaps, also be said that the cases above cited, coupled with *Galloway v. Mayor of London* (u), show that there is a distinction between the taking of lands by a railway company for their works, and the taking of lands by a local authority for street improvements. In the former case the surplus lands sold are *ex hypothesi* not wanted for the works; in the latter case the taking of lands for recoupment, beyond those which are to be retained for the new highways, may be an essential part of the scheme, which will only be completed when the new buildings are erected.

The measure of the amount of the liability.—In calculating the amount to be paid by promoters, we must notice that where promoters are carrying out several undertakings or street improvements authorised by one Act or provisional order, it may be necessary to consider each undertaking, or improvement, separately; and, if that be done, the surplus arising in respect of one undertaking cannot be set off against the deficiency of another. And a surplus in one parish cannot of course be set off against a deficiency in another, even in respect of the same undertaking.

Whether the works constitute one undertaking or several is “a matter of fact to be determined, not so much by the words used in

(s) (1887), 18 Q. B. D. 549.

(t) (1874), L. R. 10 P. C. 76, cited above. In that case, however, the liability, though it existed after the land had been parted with, came to an end on the dedication of the new streets.

(u) (1866), L. R. 1 H. L. 34.

any given document, as from the nature of the thing that is undertaken" (x). In *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (y), it was held that the improvements of several streets in different parts of Bristol, having no connection with each other, and defined as separate undertakings in the schedule to the provisional order must be treated as distinct undertakings. A similar question might arise with regard to two lines of railway, and it is submitted that the question whether they should be treated as distinct undertakings, or as one, would be almost entirely a question of fact depending on the special circumstances.

The rule for ascertaining the amount payable was thus stated in *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (z):

"The deficiency is to be computed from time to time until the liability ceases, by comparing, on the one hand, the assessed value, at the time of the passing of the Act (a) sanctioning the provisional order, of the lands taken, and, on the other hand, the assessed value at the time of such computation of such of the lands taken as may have again become assessable, and the excess, if any, of the former value over the latter is the deficiency."

This seems to state the rule more accurately than the judgment in *Stratton v. Metropolitan Board of Works*, in which it was said (b):

"The amount payable is the aggregate of the rates which would have been payable from time to time in respect of the property taken, if the property had remained as it was at the time of passing the Act; but, as soon as any new buildings were erected and assessed, or became liable to be assessed, the rateable value of such new buildings should be credited against this sum."

It seems difficult to reconcile the first part of this passage with *Vestry of St. Leonard, Shoreditch v. London County Council* (c). In that case owners of houses on land taken by the promoters had made agreements, under s. 3 of the Poor Rate Assessment and Collection Act, 1869, to pay rates instead of the occupiers, subject to being allowed a deduction of 25 per cent. from such rates, and these agreements were in force when the lands were taken. It was held that the promoters were not entitled to claim a deduction of 25 per cent. from the amount of the rates calculated on the rateable value at the time the special Act was passed.

(x) *Per* Lord ESHER, M.R., 18 Q. B. D., at p. 560.

(y) (1887), 18 Q. B. D. 549, cited above. In that case there was also a further question (arising out of local Acts) whether the city of Bristol, as a whole, or each of the nineteen parishes therein, should be treated as a separate rating area. Under the general law the parish must apparently always be taken as the rating area.

(z) (1887), 18 Q. B. D. 549, at p. 564.

(a) It seems that the liability of the promoters begins when they "become possessed"; but the amount of the liability depends upon the rateable value, as it stood at the date of the special Act, and not at the date of taking possession.

(b) (1874), L. R. 10 C. P. 76, at p. 89.

(c) [1895], 2 Q. B. 104. See also *Overseers of Putney v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440, at p. 443: *per* BOWEN, L.J.

It must be noticed that the statement in *Stratton v. Metropolitan Board of Works* (d), that "the amount payable is what the parish lost upon each assessment," cannot be correct. The effect of this would be that "although the promoters take 100 items, and 99 of these may be brought back into rateability, so that the rates have been largely increased on the hundred, if there is a deficiency on the one they are liable to make that good." This view is expressly negatived by the Court of Appeal in *Governor of the Poor of Bristol v. Mayor, etc., of Bristol* (e), and is, moreover, inconsistent with the passage above quoted from the judgment in *Stratton v. Metropolitan Board of Works*.

A difficult question arises where houses are pulled down, between the time of the passing of the special Act and the date when the promoters become possessed of the land on which the houses formerly stood. In *Churchwardens of St. Stephen v. Great Northern and City Rail. Co.* (f), it was held, with reference to a very obscurely worded section in a special Act, that the company were not liable in respect of houses which had been pulled down before they became possessed, and which had not begun to be rebuilt, the land at that moment being vacant. But it is not absolutely clear that the same result would follow under s. 133 of the Lands Clauses Consolidation Act, 1845. That section says that the "deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act." Now, if the houses diminish in value (though continuing to exist) after the passing of the special Act, before the promoters become possessed, it is clear that when they have become possessed, the "deficiency" is to be computed with reference to the higher and not the lower value. It must, however, be noticed that the liability to make good a "deficiency" (whatever that may mean) arises only when the promoters "become possessed of lands charged with land tax, or liable to be assessed to the poor's rate," and it may be argued that if a house is half pulled down, or half rebuilt, so that it is incapable as it stands, when the promoters become possessed, of being "assessed to the poor's rate" at all, the liability under the section does not attach. The case is clearly distinguishable from that of an empty house ready for occupation, where all that is wanted is an occupier to make the house "liable to be assessed."

In respect of what rates must the deficiency be made good.—In the metropolis, under s. 10 (2) of the London Government Act, 1899, the general rate and poor rate are levied together "as one rate," which is to be termed the general rate,

(d) (1874), L. R. 10 C. P. 76, at p. 87.

(e) (1887), 18 Q. B. D. 549, at p. 564.

(f) [1902] 66 J. P. 373; 18 T. L. R. 350; 50 W. R. 395.

and is to be "assessed, made, and levied as if it were the poor rate"; and the term "poor rate" in s. 133 of the Lands Clauses Consolidation Act, 1845, must be construed as limited to that part of the general rate which represents the poor rate (*g*). But the term "poor rate" in s. 133 of the Lands Clauses Consolidation Act, 1845, had previously been held to include the borough rate and the county rate, which are now charged on the poor rate (*h*), the ground of the decision being that the liability does not depend on the nature and incidence of the rates in question at the date of the passing of the Lands Clauses Consolidation Act, 1845, but on the nature and incidence of those rates at the time when the deficiency takes place. The principle of the decision referred to in the last sentence seems to apply to rates for general expenses of a rural district council levied under ss. 229, 230 of the Public Health Act, 1875. But it seems clear that it does not apply to a general district rate levied by an urban district council under s. 211 of that Act, nor to a special rate for special expenses of a rural district council under s. 230. It applies to rates made for ordinary expenses of a parish council, or parish meeting, which are paid out of the poor rate (*i*), but not to rates for expenses under the Lighting and Watching Act, 1833 (*k*), or under the Public Libraries Act, 1892 (*l*), where those Acts have been adopted; for the special rates under those Acts are to be levied as heretofore, and the expenses are not charged on the poor rate (*m*). But where a special Act enacted that the deficiency should be made good in the "general purposes rate," it was held that this included the metropolitan consolidated rate, the lighting rate, and the public libraries rate (*n*). It is by no means uncommon to find in special Acts clauses extending the liability of promoters to deficiency in rates other than the poor rate.

(*g*) *Islington Borough Council v. School Board for London*, [1903] 2 K. B. 354; Ryde and Konstam's Rat. App. (1894—1904), 293, in which *Farmer v. London and North Western Rail. Co.*, *infra*, was distinguished.

(*h*) *Farmer v. London and North Western Rail. Co.* (1888), 20 Q. B. D. 788. The decision related to a borough rate which had, in fact, been paid out of the poor rate, under s. 145 (1) of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). It is not, however, clear that it would apply to a separate borough rate, which may be made on a valuation independent of the poor rate valuation, under s. 144 (2), (6) of that Act.

(*i*) See the Local Government Act, 1894, s. 11 (4).

(*k*) 3 & 4 Will. 4, c. 90.

(*l*) 55 & 56 Vict. c. 53.

(*m*) See the Local Government Act, 1894, s. 7 (6), which overrides s. 11 (4).

(*n*) *Burruv v. London and South Western Rail. Co.* (1891), 64 L. T. 112.

CHAPTER VI.

BANKRUPTCY AND WINDING UP.

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Payment of rates in winding up companies, or in bankruptcy.—There is a distinction (less important now than formerly) between rates which are made before the commencement of the winding up of a company, or the bankruptcy of an individual, and those made afterwards.

Before the Act referred to immediately below, for rates made before the commencement of the winding up of a company, the overseers had to prove in the liquidation, like ordinary creditors, and had no priority (*a*). But the Preferential Payments in Bankruptcy Act, 1888 (*b*), now provides by s. 1 that—

“In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts [*inter alia*] all parochial or other local rates due from the bankrupt or company at the date of the receiving order or, as the case may be, the commencement of the winding up, and having become due and payable (*c*) within twelve months next before that time.”

And, by sub-s. (6), the section applies in the case of a deceased person who dies insolvent (*d*), as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

(*a*) See *In re Albion Steel and Wire Co.* (1878), 7 Ch. D. 547, explained in *In re Printing and Numerical Registering Co.* (1878), 8 Ch. D. 535. The decision, however, in the latter case was overruled in *In re Withernsea Brickworks* (1880), 16 Ch. D. 337; and the former case was not followed in *In re Association of Land Financiers* (1881), 16 Ch. D. 373. The headline in the last-mentioned case is inaccurate. See also *In re Art Engraving Co.* (1889), W. N. 33. As to the validity of a distress between the appointment of a provisional liquidator on a winding-up petition and a subsequent resolution of the company for voluntary winding up, see *In re Dry Docks Corporation* (1888), 39 Ch. D. 306.

(*b*) 51 & 52 Vict. c. 62.

(*c*) As to the case of rates payable by instalments, see the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 15, set out in Appendix II. As to the date when rates under the Public Health Act, 1875, are payable, see s. 222 of that Act.

(*d*) The section applies whether the estate is being administered by the Bankruptcy Court or by the Chancery Division: *In re Heywood*, [1897] 2 Ch. 593; see also *In re Leng*, [1895] 1 Ch. 652, at pp. 656, 657.

The priority given by this Act extends only to rates becoming "due and payable within twelve months," and does not extend to rates becoming due and payable before that time, even though they are made for a period covering part of those twelve months (*e*). The Apportionment Act, 1870 (*f*), does not apply to rates (*g*). In the case of bankruptcy, where the bankrupt continues in occupation after the date of the receiving order, even though he does so as tenant under an assignee from the trustee in bankruptcy, there is no such change of occupation as to warrant an apportionment (under s. 211 (3) of the Public Health Act, 1875) of a general district rate current at the date of the receiving order (*h*); and it seems that, in a similar case, there could be no apportionment of a poor rate under s. 16 of the Poor Rate Assessment and Collection Act, 1869 (*i*). So too where a company is being wound up, the occupation of the liquidators is not different from that of the company, so that there can be no apportionment of a general district rate current at the commencement of the winding up, under s. 211 (3) of the Public Health Act, 1875 (*k*); and it seems that in the case of a winding up there can be no apportionment of a poor rate under s. 16 of the Poor Rate Assessment and Collection Act, 1869. But if the trustee in bankruptcy (or the liquidator in winding up a company) were to assign the premises occupied by the bankrupt (or the company, as the case may be) to a stranger who entered immediately into occupation, there seems to be no reason why, in such a case, the rates current at the date when the new occupier enters should not be apportioned under the sections above referred to. At all events, the trustee in bankruptcy, or the liquidator, can take the question of the rates into account in settling the terms on which he parts with the occupation.

Occupation by, or on behalf of, trustees for debenture-holders.—In *Richards v. Overseers of Kidderminster* (*l*), a receiver and manager, appointed by a trustee under a deed of floating-charge on the assets of a company, entered into possession of the premises and carried on the business of the company. It was

(*e*) For rates made before the bankruptcy, or the commencement of the winding up, which are not entitled to priority, the local authority must prove. But a distress for such rates, if put in before the commencement of the winding up, may by leave of the court be allowed to go on. See *In re Dry Docks Corporation* (1888), 39 Ch. D. 306, at p. 312.

(*f*) 33 & 34 Vict. c. 35.

(*g*) See *In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640; *In re Mannesmann Tube Co.*, [1901] 2 Ch. 93.

(*h*) *In re Thomas* (1887), 57 L. J. Q. B. 39, decided on s. 40 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), which is repealed and re-enacted by the Preferential Payments in Bankruptcy Act, 1888.

(*i*) 32 & 33 Vict. c. 41: see Appendix II.

(*k*) See *In re Wearmouth Crown Glass Co.* (1882), 19 Ch. D. 640.

(*l*) [1896] 2 Ch. 212; 65 L. J. Ch. 502; 74 L. T. 483; 44 W. R. 505.

held by NORTH, J., that there was a change of occupancy so as to necessitate an apportionment of the then current rates under s. 16 of the Poor Rate Assessment and Collection Act, 1869, and s. 211 (3) of the Public Health Act, 1875. But the authority of this decision was, perhaps, somewhat shaken by the decisions of the Court of Appeal in *Paterson v. Gas Light and Coke Co.* (m) and *In re Marriage, Neave & Co.* (n). In the last-mentioned case, an order was made appointing a receiver and manager of a company's business, *but not directing the company to deliver up possession of the land to him*. And it was held that the legal possession remained unaltered: but apparently, had the order contained such a direction, the decision would have been the other way. And now the Preferential Payments in Bankruptcy Amendment Act, 1897 (o), by s. 3, directs that any receiver appointed on behalf of debenture-holders, or taking possession on their behalf, shall provide for payment of the debts mentioned in s. 1 of the Preferential Payments in Bankruptcy Act, 1888, and those debts are (by s. 2 of the Act of 1897) given priority over the claims of debenture-holders (p): but by s. 3 any payments made under that section shall be recouped as far as may be out of the assets of the company available for payment of general creditors. This provision applies even where a receiver, on behalf of debenture-holders, has entered into possession of the company's premises during the period for which the rate was made (q), so that in a sense the debenture-holders, and not the company, have had the benefit of the occupation for part of that period. As to water rate payable to a local authority, a meter rent payable in advance must be paid in full by the company; but water rate (if payable by meter) must be apportioned between the time before and after the winding up (r).

Rates made during the winding up of a company.—In respect of these rates, three questions may arise: (1) whether there has been any occupation by the liquidator in respect of which a liability

(m) [1896] 2 Ch. 476. See also *Husey v. Gas Light and Coke Co.*, [1902] 18 T. L. R. 299. The question of occupation by a receiver was discussed, but not decided, in *Husey v. London Electric Supply Corporation*, [1902] 1 Ch. 411.

(n) [1896] 2 Ch. 663; but, at p. 678, RIGBY, L.J., declares that case to be absolutely different from *Richards v. Overseers of Kidderminster*, *ubi supra*.

(o) 60 & 61 Vict. c. 19. The Act does not apply where a receiver has been appointed in an action for realisation of the debentures before the commencement of the Act: see *In re Waverley Type Writer*, [1898] 1 Ch. 699.

(p) This enactment was no doubt passed to meet the decision on this point in *Richards v. Overseers of Kidderminster*, [1896] 2 Ch. 212.

(q) *In re Mannesmann Tube Co.*, [1901] 2 Ch. 93; 84 L. T. 579; 70 L. J. Ch. 565; 65 J. P. 377.

(r) *In re Mannesmann Tube Co.*, *supra*. The application of this ruling to the facts of that case seems to the writer to be very obscure. The water rate in question was made *before* the winding up, and if charged by meter must have been retrospective: if so, no apportionment was necessary.

to be rated exists? and (2) if so, can a distress warrant be issued? and (3) against whom?

It was at one time held that, in order to make the rate payable, there must be, not merely possession and occupation by the liquidator, but enjoyment (s); so that if the liquidator merely held the company's premises for the purpose of selling the business as a going concern, and made no profit, no rates were payable. But the true test must now be taken to be whether there has been a "beneficial occupation" within the ordinary meaning of those words in cases as to rating (t). It must be remembered that, even where the liquidator makes no actual profits by continuing to carry on the company's business, he may avoid loss on the sale of the business, or may escape a liability in respect of unfinished contracts, and "the avoiding of loss is the acquisition of gain" (u); and, where there is on the company's premises valuable plant or machinery which is not rateable, the use of the premises for warehousing that plant or machinery is enough to render the occupation rateable (v).

Procedure in obtaining a distress warrant.—The Companies Act, 1862 (y), by s. 153, makes void any attachment, distress, etc., against the estate or effects of the company after the commencement of the winding up; and proceedings may be restrained by injunction under s. 85. But, under s. 87, proceedings may be continued against the company by leave of the court; and, under this section, leave is sometimes given to overseers or other local authorities to distrain for rates made during the winding up (z), the granting of the leave being, in substance, equivalent to an order for payment of the rates in full, on the ground that they are expenses incurred in the winding up (a). It was, at one time, held that leave ought not to be given for payment of the rates in full where they were manifestly excessive in amount (b); but the law must now be taken to be, that if a liquidator neglects to appeal against an assessment, it does not lie in his mouth to say that it is

(s) *In re West Hartlepool Iron Co.* (1876), 34 L. T. 568; followed in *In re Watson, Kipling & Co.* (1883), 23 Ch. D. 500.

(t) *In re National Arms Co.* (1885), 28 Ch. D. 474, at p. 482; followed in *In re Blazer Fire Lighter*, [1895] 1 Ch. 402. See also *In re International Marine Co.* (1884), 28 Ch. D. 470.

(u) *Per* BOWEN, L.J., 28 Ch. D., at p. 480.

(v) See *Staley v. Castleton* (1864), 33 L. J. M. C. 178, *infra*, p. 160. *In re Blazer Fire Lighter*, [1895] 1 Ch. 402, was apparently decided on this ground.

(y) 25 & 26 Vict. c. 89. As to the application of the sections quoted to voluntary winding up, see ss. 133, 138, and Buckley on Companies, 7th ed., pp. 259, 431.

(z) The summons in the winding up should be taken out in this form: *In re Watson, Kipling & Co.* (1883), 23 Ch. D. 500, at p. 505; and see *In re International Marine, etc., Co.* (1884), 28 Ch. D. 470; *In re National Arms Co.* (1885), 28 Ch. D. 474.

(a) *Vide per* FRY, L.J., 28 Ch. D. 473; *per* BAGGALLAY, L.J., 28 Ch. D., at p. 474.

(b) *In re Watson, Kipling & Co.* (1883), 23 Ch. D. 500.

an improper one : and the court will not refuse to order payment of the rates in full, except, perhaps, in extreme cases (*c*). It must be noticed that neither of the cases here cited arose within the metropolis, where the valuation list is binding (on questions of amount) for five years : and where the liquidator had no opportunity of disputing the amount of the assessment (*d*), the court might refuse to order a manifestly unjust rate to be paid in full, without violating the principles laid down in the case last cited. At the same time, it is submitted, the court would only refuse in an extreme case ; for it could hardly be expected that the Chancery Division would minutely consider disputed questions of amount, and, in effect, try a rating appeal under another form of procedure. It must also be noticed that, where the liquidator is bound by the valuation list in force, the company also would have been bound had there been no winding up ; and it may, perhaps, be held that the liquidator (who takes the place of the company) can be in no better position, as against the rating authorities, than that in which the company itself would have been.

Against whom a distress warrant may be granted.—The person named as occupier in the rate is the only person whose goods are liable to distress (*e*) ; and therefore it seems that, if the goods of the company are to be made liable to distress, the company should be rated while the liquidation is proceeding. But assuming that the liquidator is named in the rate as liquidator, is he personally liable to have his goods distrained ? It is submitted that he is not, though there is a conflict of decisions upon the point.

In *R. v. Curzon* (*f*), it was held that the liquidator is merely in the position of a statutory director, that he is merely an officer of the court, and that a distress warrant cannot be issued against his goods (*g*). But, on exactly similar facts, it was held, in *Dent v. Commondale Overseers* (*h*), that as the rate was good on the face of it, and the liquidator (who was admittedly “the only visible occupier”) had not appealed, he must be the person against whom

(*c*) *In re National Arms Co.* (1885), 28 Ch. D. 474.

(*d*) An instance of an appeal by a liquidator against a valuation list in the metropolis will be found in *Mackay v. Strand Union*, Ryde's Rat. App. (1886–1890), 163. In some cases it might be possible for the liquidator to appeal against a supplemental list on the ground that the company's property should be inserted therein at a reduced assessment.

(*e*) *In re Marriage, Neave & Co.*, [1896] 2 Ch. 663. In the metropolis, where a name is wrongly inserted, the rate can be amended under s. 72 of the Valuation (Metropolis) Act, 1869, and the name of another person may be inserted in the rate, and then his goods may become liable.

(*f*) (1882), 46 L. T. 159 ; 47 J. P. 37. The former report gives a copy of the rate, on which the liquidator's name appeared, with the addition of the words “official liquidator,” but in the column headed “name of owner.”

(*g*) Note that had proceedings been taken for distress of the company's goods, the absence of leave under s. 87 of the Companies Act, 1862, would have been an answer : *vide supra*, p. 85.

(*h*) [1891] 55 J. P. 805.

the distress warrant must issue. It is submitted that this decision is in conflict with *In re Wearmouth Crown Glass Co.* (i), and, further, that it is wrong on general principles. For a fallacy lies in the admission that the liquidator was "the only visible occupier." A servant or caretaker residing on premises may be in one sense "the only visible occupier," but he is not the "occupier" for the purposes of rating, because the occupation is that of his master (k); and on the hearing of a summons for a distress warrant, the person rated (even though he has not appealed) is entitled to prove that he is only a servant or caretaker (l). It is submitted that whether the liquidator be regarded as "a statutory director" of the company, or as an officer of the court, or the agent of the creditors of the company, he is not personally liable for rates, and when a distress warrant is applied for, can dispute that liability on the ground that he is not the "occupier" within 43 Eliz. c. 2.

(i) (1882), 19 Ch. D. 640, *supra*, p. 83. In that case it was decided that the occupation of the liquidator is not different from that of the company.

(k) *Vide supra*, pp. 21—23.

(l) *R. v. Simmons*, Ryde's Rat. App. (1891—1893), 316.

CHAPTER VII.

EXEMPTION OF CROWN PROPERTY.

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Preliminary.—It has been said that the decisions in rating cases have been progressive, and of no class of cases can this be more truly said than of those which deal with property belonging to the Crown or used for public purposes. The decision of the House of Lords in *Jones v. Mersey Docks (a)* constitutes the great turning point in a long series of cases, and the date of that decision (1865) must be borne in mind in all attempts to reconcile decisions as to the extent of the exemption of property occupied for public purposes.

The following propositions seem to be established :—

1. The Crown not being named in the Statute of Elizabeth, is not bound by it.

2. No rate can be imposed in respect of property in the occupation of the Crown by itself or by its servants, whose occupation amounts to the occupation of the Crown.

3. No rate can be imposed in respect of property occupied by persons who are not, strictly speaking, servants of the Crown, if they occupy for public purposes which are required and created by the government of the country, and are, according to the theory of the constitution, administered by the Crown.

4. The exemption attaches although the property be used for purposes of imperial government in a particular locality only, and although it be provided and maintained by means of funds raised by local rates.

(a) (1865), 11 H. L. Cas. 443.

5. Property occupied for "public purposes" is not exempt, unless it comes within the foregoing propositions (*b*).

The principal cases which may be cited as authority for these propositions are *Jones v. Mersey Docks* (*c*), *Leith Harbour Commissioners v. Inspector of the Poor* (*d*), *Greig v. Edinburgh University* (*e*), *Coomber v. Berkshire J.J.* (*f*).

It is the practice for many Government departments to make a voluntary contribution in aid of rates in respect of property occupied in the service of the Crown. But these payments are calculated upon a rateable value fixed by the Government valuer, and do not negative the existence of the exemption of the Crown. In one or two Acts referred to below (*g*), the exemption has by special enactment been wholly or partially taken away.

The Crown is not bound by the Statute of Elizabeth.—In *Jones v. Mersey Docks* (*h*), BLACKBURN, J. (delivering the opinion of the majority of the judges, which was adopted by the House of Lords), thus stated the general rule :

"The Crown not being named in the Statute of Elizabeth is not bound by it (*i*); and consequently the overseers cannot impose a rate on the Sovereign in respect of lands occupied by Her Majesty, nor on those occupied by her servants for Her Majesty. The exemption depends entirely on the occupier and not on the title to the property. The tenants of Crown property, paying rent for it, are rateable like all other occupiers (*k*): and it has even been determined that where apartments in Hampton Court, a royal palace, were gratuitously assigned to a subject, who occupied them by the permission of the Sovereign, but for the subject's benefit, the subject was rateable in respect of her occupation of this royal property (*l*). On the other hand, where a lease of private property is taken in the name of the subject, but the occupation is by the Sovereign or her servants on her behalf, the occupation being that of Her Majesty, no rate can be imposed" (*m*).

The effect of the *Mersey Docks Case* (*n*), was to recall the courts to the words of the Act of Elizabeth. It overruled a number of cases in which exemption had been allowed in respect of property occupied "for public purposes," and an exemption which rests on this ground alone cannot now be supported. In many cases decided before the *Mersey Docks Case*, as, for instance, in *Lord Anherst v. Lord Somers* (*o*), the exemption was allowed on the

(*b*) The rating of property occupied for "public purposes" is further considered in Chapter XII., *infra*.

(*c*) (1865), 11 H. L. Cas. 443.

(*d*) (1866), L. R. 1 H. L. Sc. 17.

(*e*) (1868), L. R. 1 H. L. Sc. 348, *infra*, p. 92.

(*f*) (1883), 9 App. Cas. 61, *infra*, p. 93.

(*g*) *Infra*, pp. 101, 102.

(*h*) (1865), 11 H. L. Cas. 443, at p. 463.

(*i*) *Cf. R. v. Cook* (1790), 3 T. R. 519.

(*k*) See *Duke of Portland v. St. Margaret's, Westminster* (1759), 1 Const. 131. And a tenant is liable though he pay for his occupation by services, and not by rent : *R. v. Mathews* (1777), Cald. 1 ; 1 Const. 151.

(*l*) See *R. v. Ponsonby* (1842), 3 Q. B. 14.

(*m*) See *Lord Anherst v. Lord Somers* (1788), 2 T. R. 372.

(*n*) (1865), 11 H. L. Cas. 443.

(*o*) (1788), 2 T. R. 372.

ground that the property in question was occupied by the Crown *and* for public purposes. Some of the earlier decisions were expressly affirmed by the *Mersey Docks Case*; others must be reviewed by the light of the *Mersey Docks Case*. Some of the cases in which the exemption was wrongly allowed on the ground that the property was occupied for public purposes can be supported on the ground that it was occupied by, or for, the Crown.

The House of Lords is exempt, as being one of His Majesty's palaces (*p*).

The general rule, that the Crown is not bound by a statute unless expressly named therein, applies even though special exceptions in favour of the Crown are inserted in it, for those exceptions may be regarded as having been inserted *ex majori cautela*, and not as being intended to exclude the application of the general rule (*q*). So, too, notwithstanding the express exemption from rateability given by 26 & 27 Vict. c. 65, s. 26, to *storehouses* used by the volunteers, it has been held that *all property* used for the purposes of the volunteers is exempt as being occupied for the purposes of the Crown (*r*).

Occupation by servants of the Crown: the Mersey Docks Case.—The exemption of property occupied by the servants of the Crown is not limited to cases in which those servants stand in such a position that, if they were the servants of a subject, the master and not the servant would be regarded as the occupier, and therefore rateable. It will be seen that in one or two instances attempts have been made to limit the exemption to such cases (*s*); but the great weight of authority clearly shows that it extends to cases, where the property is occupied for the purposes of imperial government, though not occupied by persons strictly servants of the Crown.

In the *Mersey Docks Case* (*t*), the law was thus stated by BLACKBURN, J., delivering the opinion of the majority of the judges :

“ Long series of cases have established that where property is occupied for the purposes of the government of the country, including under that head the police, and the administration of justice, no one is rateable in respect of

(*p*) *Leith Harbour Commissioners v. Inspector of the Poor* (1866), L. R. 1 H. L. Sc. 17.

(*q*) *Smithett v. Blythe* (1830), 1 B. & A. 509; *Mayor, etc., of Weymouth v. Nugent* (1865), 34 L. J. M. C. 81 : 6 B. & S. 22; *Hornsey Urban District Council v. Hennell*, [1902] 2 K. B. 73.

(*r*) *Pearson v. Holborn Union*, [1893] 1 Q. B. 389; *Ryde's Rat. App.* (1891—1893), 303.

(*s*) See the judgments of Lord CRANWORTH, in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at p. 508, *infra*, p. 91; and of Lord ESHER, M.R., in *Tunnicliffe v. Overseers of Birkdale* (1888), 20 Q. B. D. 450, at pp. 451, 452, *infra*, p. 96.

(*t*) (1865), 11 H. L. Cas. 443, at p. 464.

such occupation. And this applies not only to property occupied by the servants of the great departments of state, such as the Post Office (*u*), the Horse Guards (*x*) or the Admiralty (*y*), in all which cases the occupiers might strictly be called the servants of the Crown; but also to property occupied by local police (*z*), to county buildings occupied for the assizes and for the judges' lodgings (*a*), or occupied as a county court (*b*), or for a gaol (*c*).

"In these latter cases it is difficult to maintain that the occupants are, strictly speaking, servants of the Sovereign, so as to make the occupation that of Her Majesty: but the purposes are all public purposes of that kind which by the constitution of this country fall within the province of government, and are committed to the Sovereign, so that the occupiers, though not perhaps strictly servants of the Sovereign, might be considered *in consimili casu*" (*d*).

Approving the opinion expressed by the judges, Lord WESTBURY said (*e*):

"The only ground of exemption from the Statute of Elizabeth is that which is furnished by the rule, that the Sovereign is not bound by that statute, and that consequently when valuable property (that is, property capable of yielding a net rent above what is required for its maintenance) is sought to be exempted on the ground that it is occupied by bare trustees for public purposes, the public purposes must be such as are required and created by the Government of the country, and are therefore to be deemed part of the use and service of the Crown."

Lord CRANWORTH (referring to the cases cited by BLACKBURN, J., as stated above) said (*f*):

"These decisions have all gone on the ground, more or less sound, that these might all be treated as buildings occupied by servants of the Crown, and for the Crown, extending in some instances the shield of the Crown to what might more fitly be described as the Government of the country" (*g*).

From these judgments it would seem that the House of Lords, while laying down a principle which must overrule many previous decisions, were anxious to bring as many cases as possible within that principle. The rule laid down by BLACKBURN, J., makes it permissible to look at the object of the occupation as well as the person of the occupier. And this has been done in many cases, and notably in *Coomber v. Berkshire JJ.* (*h*).

In order that the exemption of the Crown should apply, it must be shown that the Crown, or a servant of the Crown, is the occupier,

(*u*) *Smith v. Birmingham* (1857), 7 E. & B. 483.

(*x*) *Lord Anherst v. Lord Somers* (1788), 2 T. R. 372; 1 Rev. Rep. 497.

(*y*) *R. v. Stewart* (1857), 8 E. & B. 360.

(*z*) *Lancashire JJ. v. Strctford* (1858), E. B. & E. 225.

(*a*) *Hodgson v. Local Board of Carlisle* (1857), 8 E. & B. 116.

(*b*) *R. v. Manchester* (1854), 3 E. & B. 336. The case was, however, decided on the ground that there was no "beneficial occupation," and not on the ground that the building was occupied by servants of the Crown.

(*c*) *R. v. Shepherd* (1841), 1 Q. B. 170.

(*d*) This part of the opinion was revised and the original draft altered, after consultation with the other judges: *per* BLACKBURN, J., *R. v. McCann* (1868), L. R. 3 Q. B., at p. 145.

(*e*) *Jones v. Mersey Docks* (1865), 11 H. L. Cas., at p. 504. (*f*) *Ibid.*, p. 508.

(*g*) *Cf. Leith Harbour Commissioners v. Inspectors of the Poor* (1866), L. R. 1 H. L. Sc. 17.

(*h*) (1883), 9 App. Cas. 61, *infra*, p. 93.

and not in a position similar to that of a lodger. Thus, where the Commissioners of Inland Revenue took part of a house as offices, on such terms that the landlord remained the "occupier" of the whole house, no exemption attached (*i*).

Where a person inhabits a dwelling-house which is exempt as being occupied on behalf of the Crown, such person is not disentitled to be registered as a voter, and his name must be entered on the rate-book (*k*).

The Edinburgh University Case.—In *Greig v. University of Edinburgh* (*l*) it was contended (1) that the university was exempt on the score of "Crown privilege," and (2) that the buildings were of no annual value (*m*). Upon the former point it was held that it was not a sufficient ground for exemption that the university was created by royal charter, or that the Crown was the visitor. Lord CAIRNS, L.C., after referring to the *Mersey Docks Case*, thus stated the rule (*n*) :

"The Crown not being named in the statutes on the subject of assessment, and not being bound by statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively (*o*) in and for the service of the Crown, is not rateable."

And Lord WESTBURY stated the effect of *Jones v. Mersey Docks* as follows (*p*) :

"The result was that Crown property, and property occupied by servants of the Crown, and (according to the theory of the constitution) property occupied for the purposes of the administration of the government of the country, became exempt from liability to poor rate."

In this passage Lord WESTBURY extends the exemption as widely as Lord BLACKBURN had done in *Jones v. Mersey Docks* (*q*). In none of the cases above considered had it been necessary to determine whether property held "for the administration of the government of the country" was exempt. But in the following case the point was expressly decided by the House of Lords, of which Lord BLACKBURN had become a member.

(*i*) *R. v. Smith* (1860), 30 L. J. M. C. 74, *supra*, p. 28.

(*k*) The Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 9 (9).

(*l*) (1868), L. R. 1 H. L. Sc. 348.

(*m*) The meaning of "beneficial occupation" is considered in Chapter XII. The rateability of the property of Oxford University was specially considered (before the *Mersey Docks Case*): see *In re Oxford Rate* (1857), 8 E. & B. 184. But by the Local Government Board's Provisional Orders Confirmation Act, 1875 (38 & 39 Vict. c. clxviii.), s. 2 (4), "all the land and buildings within the said university [of Oxford] which are now by law exempted from being rated to the relief of the poor shall be rateable to the relief of the poor, in the same manner as other rateable property within the said university." See also as to the general district rate 28 & 29 Vict. c. 108, s. 8. As to the measure of the value of the university buildings, see p. 178, *infra*.

(*n*) L. R. 1 H. L. Sc., at p. 350.

(*o*) See *Worcestershire County Council v. Worcester Union*, [1897] 1 Q. B. 480, *infra*, p. 94; and *Lewis v. Durham Union*, [1904] Ryde and Konstan's Rat. App. (1894–1904), 357.

(*p*) See L. R. 1 H. L. Sc., at p. 354.

(*q*) (1865), 11 H. L. Cas. 443, at p. 464, *supra*, pp. 90, 91.

Assize courts and county buildings: Coomber v. Berks JJ.

—In *Coomber v. Berkshire JJ.* (*r*), the justices of a county under statutory powers, by means of funds provided out of, or charged upon the county and police rates, erected assize courts with the usual rooms and offices, and a county police station with the offices and accommodation for constables living there, and for prisoners. The land was conveyed to the clerk of the peace upon trust for the construction of a police station, and otherwise for such uses as the county justices should from time to time order. The buildings formed one block, and were used for the administration of justice and for police purposes. Parts of the buildings were also used for holding county and committee meetings and various other occasional purposes, but no rent or profit was received or made in respect of the buildings or any part of them. It was held that the buildings were within the exemption.

Lord BLACKBURN said (*s*) :

“I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and the prevention of crime. by means of what is now called police, are among the most important functions of government, nor that by the constitution of this country those functions do, of common right, belong to the Crown.”

And after referring to the passage in *Jones v. Mersey Docks* (*t*), relating to buildings occupied for police, and for assize courts, Lord BLACKBURN continued thus (*u*) :

“I cannot see sufficient reason for saying that [the cases referred to] are wrong. I do not say that the assize courts maintained by the county for the administration of the Queen’s justice in the Queen’s court are quite so clearly occupied by the servants of the Crown as those courts which are maintained by the Woods and Forests out of the general revenue of the country. Nor do I say that the police station, maintained by the county for the maintenance of the police, is quite so clearly occupied by the servants of the Crown as a barrack maintained for soldiers, and paid for out of the general revenues of the country. But I think there is great reason for saying that both are maintained for the purposes of the administration, or those purposes of the Government which are, according to the theory of the constitution, administered by the Sovereign.”

In answer to an objection that the county police is a local purpose and one of the local government, Lord BLACKBURN said (*x*) :

“If this were so, it would be a reason for holding the premises assessable to the poor rate. . . . The general government administers law and justice, and keeps order, but it necessarily does so in different localities separately. . . . It is a purpose of the Imperial Government, carried out in a particular locality, but not the less a purpose of the Imperial Government.”

(*r*) (1883), 9 App. Cas. 61. The case was decided upon a claim of exemption from income tax; but it was expressly held that the ground of exemption from poor rate and from income tax was identical: see 9 App. Cas., at pp. 71, 77, 79.

(*s*) 9 App. Cas., at p. 67.

(*t*) The passage referred to is set out above at p. 90: see 11 H. L. Cas., at p. 464.

(*u*) 9 App. Cas., at p. 69.

(*x*) 9 App. Cas., at p. 71.

In the same case Lord WATSON (*y*) referred to the rule laid down by Lord WESTBURY in *Jones v. Mersey Docks* (*z*) thus:

“The precise language of that definition satisfies me that the noble and learned lord meant to affirm, and did affirm, that the exemption extended not only to the immediate and actual servants of the Crown, but to all other persons, not being servants of the Crown, whose occupation was ascribable to a bare trust for purposes required and created by the Government of the country. And seeing that in my opinion the administration of justice, the maintenance of order, and the repression of crime are among the primary and inalienable functions of a constitutional government, I have no hesitation in holding that assize courts and police stations have been erected for proper government purposes and uses, although the duty of providing and maintaining them has been cast upon county or other local authorities.”

Buildings belonging to county councils.—Before the passing of the Local Government Act, 1888, a great deal of the administrative business of each county was in the hands of the county justices, who were, of course, nominated by the Crown, and for judicial purposes might be regarded as the servants of the Crown (*a*). In *Nicholson v. Holborn Union* (*b*), following *Coomber v. Berkshire JJ.* (*c*), it was held that the Clerkenwell sessions house (including the rooms assigned to the resident keeper of the sessions house), which was used for the administration of justice and the discharge of the public business of the county, was not rateable. But the Local Government Act, 1888 (*d*), has now transferred “administrative business” to the county council, and it has been held (as to the Middlesex sessions house at Westminster, which was vested in the county council) that so much of the building as was occupied for administrative business was rateable; that so much as was occupied for purely judicial business of the justices was not rateable; and that so much as was occupied partly for judicial business and partly for administrative business was rateable to such an extent as it was used for administrative business (*e*). This decision was followed in *Worcestershire County Council v. Worcester Union* (*f*), in which it was held that the exemption of property used by persons acting in the service of the Crown applied only where the property was exclusively used for such service; and *Nicholson v. Holborn Union* (cited above) was questioned. In a Scottish case (*g*) it

(*y*) 9 App. Cas., at p. 74.

(*z*) (1865), 11 H. L. Cas. 443: the words referred to are set out above, p. 91.

(*a*) See *Durham County Council v. Chester-le-Street*, [1891] 1 Q. B. 330, at p. 337.

(*b*) (1886), 18 Q. B. D. 161.

(*c*) (1883), 9 App. Cas. 61.

(*d*) 51 & 52 Vict. c. 41, s. 3.

(*e*) *Middlesex County Council v. St. George's Union*, [1897] 1 Q. B. 64. The judgment of Lord ESHER, M.R. (*ibid.*, p. 69), does not correctly state the question before the court, as to the parts occupied jointly by the county council and the justices.

(*f*) [1897] 1 Q. B. 481. See also *Lewis v. Durham Union*, [1904] Ryde and Konstan's Rat. App. (1894—1904). 357.

(*g*) *Brown v. Smith*, [1901] 4 Tax. Cas. 435; 4 F. 31; 39 S. L. R. 20. See also *Rayner v. Drwitt*, [1900] 64 J. P. 567; 82 L. T. 718; *infra*, p. 97.

was held that a building built and used primarily and mainly for county business, but occasionally and accidentally for the purposes of a court of justice, was not exempt from income tax; and this decision would apply also to poor rate (*h*).

Prisons and courts of justice.—There can be no doubt that prisons and courts of justice come under the exemption extended to the Crown upon the general principle that the administration of justice and the repression of crime are “inalienable functions of a constitutional government” (*i*). In some of the earlier cases prisons and courts of justice were held exempt on the less satisfactory ground that there was no occupier, or no beneficial occupation, of such buildings (*k*). In *R. v. Worcestershire JJ.* (*l*), it was held that courts and judges’ lodgings, provided out of the county rate, were exempt on the ground that they were occupied by the county justices as a body, only for public purposes, and that, although there might be some occupation for other purposes by individual justices, that would not support a rate on the whole body.

It is submitted that the true test must now be taken to be whether the buildings are occupied by (or for the purposes of) the Crown, and that exemption does not depend upon the existence or non-existence of beneficial occupation. But in *Lancashire JJ. v. Cheetham* (*m*), where the Lancashire county justices had provided law courts for the county assizes, but permitted the corporation of Manchester to use the courts for the city quarter sessions, on payment of an annual contribution of 600*l.*, which was far less than the cost of maintenance, it was held that the county justices must be rated upon the 600*l.* But this decision seems to be open to serious objection; (1) because the payment of 600*l.* did not make the occupation “beneficial,” inasmuch as it was not “a clear rent over and above the necessary outgoings” (*n*); and (2) because an occupation for the purposes of quarter sessions was an occupation for the purposes of the Crown. The decision has, however, been recently followed (*nn*).

In *Gambier v. Lydford* (*o*), it was held that a prison was not rateable; but that a farm cultivated by the convicts, and a shop outside the prison, and a canteen within the prison were rateable.

(*h*) *Coomber v. Berkshire JJ.* (1883), 9 A. C. 61, at pp. 71, 77, 79.

(*i*) See *Coomber v. Berkshire JJ.* (1883), 9 App. Cas. 61, at p. 74, *supra*, p. 94; *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at p. 465, *supra*, p. 91; *R. v. St. Martin’s, Leicester* (1867), L. R. 2 Q. B. 493, at p. 502.

(*k*) *R. v. Shepherd* (1841), 1 Q. B. 170; *Gambier v. Overseers of Lydford* (1854), 3 E. & B. 346; *R. v. Overseers of Manchester* (1854), 3 E. & B. 336; see also *Tracey v. Taylor* (1842), 3 Q. B. 966.

(*l*) (1839), 11 A. & E. 57.

(*m*) (1867), L. R. 3 Q. B. 14.

(*n*) See *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at p. 501, *supra*, p. 91. Cf. *Lambeth Overseers v. London County Council*, [1897] A. C. 625, at p. 631.

(*nn*) *Lewis v. Durham Union*, [1904] Ryde and Koustam’s Rat. App. (1894–1904), 357.

(*o*) (1854), 3 E. & B. 346. See as to the officers’ quarters, p. 99, *infra*.

In this case, which was decided before *Jones v. Mersey Docks* (p), the exemption was made to depend upon the existence or non-existence of beneficial occupation.

Reformatories and industrial schools.—In *Sheppard v. Bradford* (q), decided in the year before *Jones v. Mersey Docks* (r), it was held that a reformatory (supported partly by voluntary subscriptions and partly by a Government grant) was in the nature of a prison (s), and was not rateable. But in *R. v. West Derby* (t), decided after *Jones v. Mersey Docks*, it was held that an industrial school, supported partly by charitable contributions and partly by a Government grant, was not exempt; and it was apparently considered that *Sheppard v. Bradford* must be taken to be overruled by *Jones v. Mersey Docks*. The decision on the latter point was expressly affirmed by the Court of Appeal in *Tunnicliffe v. Overseers of Birkdale* (u), in which it was held that a reformatory school, founded and managed by private persons, and supported in part by charitable contributions, was not exempt; but the reasons given are not altogether satisfactory. The judges did not agree upon the question whether the reformatory could be regarded as a prison or not. With reference to the judgment of Lord CRANWORTH, in *Jones v. Mersey Docks* (x), Lord ESHER, M.R., said (y) :

“The meaning is that the exemption extends to all lands or houses which are occupied by the servants of the Sovereign in his sovereign capacity, in such wise that the occupation by them is, as in the case of the occupation of houses or lands by servants of a private individual, the occupation not of the servants but of the master. . . . The true general rule seems to me to be that there is an exemption only in cases where, if any one were to be rated for the premises, it would be the Crown. Where the property is occupied by the servants of the Crown as such, of course such servants could not be rateable, for they do not occupy for themselves; they only hold and manage the property for the Crown, like the servants of an ordinary master, whose occupation is not their own in law but their master's: the Crown itself would be rateable, if any one were.”

It is not easy to reconcile this judgment with the decision of the House of Lords in *Coomber v. Berkshire JJ.* (z), and, indeed, Lord ESHER himself describes the language of Lord WATSON in that case as “not quite accurate.” Logically, it may be more consistent to say (as, perhaps, Lord ESHER was prepared to hold), that the exemption of the Crown extends only to cases where the rate (if paid) would be paid out of funds belonging to the Crown; for the poor rate is a personal tax, and the exemption attaches to

(p) (1865), 11 H. L. Cas. 443.

(q) (1864), 33 L. J. M. C. 182.

(r) (1865), 11 H. L. Cas. 443.

(s) See *Gambier v. Overseers of Lydford* (1854), 3 E. & B. 346; *supra*, p. 95.

(t) (1875), L. R. 10 Q. B. 283.

(u) (1888), 20 Q. B. D. 450; *Ryde's Rat. App.* (1886—1890), 286.

(x) (1865), 11 H. L. Cas., at p. 508, *supra*, p. 91.

(y) 20 Q. B. D., at p. 452.

(z) (1883), 9 App. Cas. 61, *supra*, p. 93.

the occupier, and not to the land occupied (*a*). But it is impossible so to limit the exemption without contradicting *Coomber v. Berkshire JJ.*, in which Lord BLACKBURN expressly decided that buildings maintained out of local rates were exempt (*b*). If the cases are inconsistent, the decision of the House of Lords must, of course, prevail.

In *R. v. West Derby* (*c*), and in *Tunnicliffe v. Overseers of Birkdale* (*d*), the schools were in part supported by voluntary contributions; but this fact was held to be immaterial in *Durham County Council v. Chester-le-Street* (*e*), in which it was held that the Crown exemption did not extend to an industrial school founded by justices by means of money borrowed on the security of the county rate, and maintained partly out of a Government grant, partly out of the proceeds of the boys' work, and partly out of the county rate, the school having been managed (since the passing of the Local Government Act, 1888) by the county council instead of the justices; and the transfer from the justices to the county council (under s. 3 of that Act) was held to make it still more clear than before that the school was not occupied by servants of the Crown.

Quarters of military and police officers.—The Crown exemption extends to premises occupied for the purposes of the army (*f*), the militia (*g*), the volunteers (*h*), or county or other local police (*i*). Storehouses for militia and volunteers have been declared specially exempt by statute (*k*); but the principles laid down in *R. v. Jay* and *Pearson v. Holborn Union* (cited in the notes) seem to show that, without any such special exemptions, such properties would have been exempt on general principles. In *Rayner v. Druitt* (*l*), it was held that a volunteer drill hall which was occasionally let for concerts and other entertainments was not entirely exempt, but it was suggested that probably it ought to be rated only for

(*a*) *Vide supra*, p. 6.

(*b*) See 9 App. Cas., at pp. 69, 70, *supra*, p. 93.

(*c*) (1875), L. R. 10 Q. B. 283.

(*d*) (1888), 20 Q. B. D. 450.

(*e*) [1891] 1 Q. B. 330; Ryde's Rat. App. (1891—1893), 267.

(*f*) *Lord Amherst v. Lord Somers* (1788), 2 T. R. 372; *R. v. Stewart* (1857), 8 E. & B. 360; *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at pp. 464, 508, *supra*, p. 91.

(*g*) *R. v. Fuller* (1855), 8 E. & B. 365 n.; *R. v. Jay* (1857), 8 E. & B. 469.

(*h*) *Pearson v. Holborn Union*, [1893] 1 Q. B. 389; Ryde's Rat. App. (1891—1893), 303; see also *Hornsey Urban District Council v. Hennell*, [1902] 2 K. B. 73, decided on s. 150 of the Public Health Act, 1875. The latter case throws great doubt on, if it does not in effect overrule, *Westminster Vestry v. Hoskins*, [1899] 2 Q. B. 474, decided on the Metropolis Management Acts.

(*i*) *Lancashire JJ. v. Stretford* (1858), E. B. & E. 225; *Jones v. Mersey Docks*, *supra*, p. 91; *Coomber v. Berkshire JJ.* (1883), 9 App. Cas. 61, at pp. 70, 71, *supra*, p. 93; *R. St. Martin's, Leicester* (1867), L. R. 2 Q. B. 493. In *Mayor, etc., of London v. City of London Union*, Ryde's Rat. App. (1886—1890), 130, the assessment sessions held that a police station, held by the corporation for the City police, was not rateable.

(*k*) See, as to the militia, 17 & 18 Vict. c. 105, s. 2, and, as to the volunteers, 26 & 27 Vict. c. 65, s. 26.

(*l*) [1900] 64 J. P. 567; 82 L. T. 718.

its value as used for purposes other than those of the Crown. The court, however, apparently did not consider the question whether the exemption would be lost if the money received by letting the hall were wholly applied to the purposes of the corps, that is to purposes of the Crown. But in *Lewis v. Durham Union* (*m*), where some of the rooms connected with a volunteer drill-hall were occasionally let for concerts and similar purposes, the money received from the letting being devoted to paying interest for money borrowed on a mortgage of the premises from the Public Works Loans Board, it was held that the rooms so let were rateable, and that where property is not actually, but only constructively, in the occupation of the Crown, there must be exclusive occupation for crown purposes to support an exemption.

It is submitted that the test which ought to be applied, and which (in substance) has been applied in most of the cases dealing with the servants of the Crown, is the same as that suggested above in deciding whether a person, in the service of a subject, is rateable for the house in which he resides (*n*). Exemption (it is submitted) should depend upon the question whether the officer is required, as part of his duty, or merely permitted for his own convenience, to reside in the quarters assigned to him; or, putting the question in another form, is residence in the quarters part of the services which the officer is paid to perform, or is the provision of the quarters merely a part of the remuneration for those services? But all the cases are not easily reconciled with this rule, or, perhaps, with any one rule.

In *R. v. Hurdiss* (*o*), it was held that the master-gunner of a fort at Seaford was rateable as the occupier of the house adjoining, which was the property of the Crown: but the decision was based on the finding of the sessions that the master-gunner was "the occupier," and his position was distinguished from that of common soldiers "who cannot be said to be the 'occupiers' of their barracks, in the legal signification of the word, for they are no more than mere servants."

In *R. v. Shepherd* (*p*), the governor of a prison, who had a house and garden provided for him within the prison, was held to be not rateable, because "he was compelled to reside on the premises, at all times, and performed his duty by that act of residence." And this decision was followed in *Bedfordshire JJ. v. St. Paul's, Bedford* (*q*), where the quarters in question were

(*m*) [1904] Ryde & Konstam's Rat. App. (1894—1904), 357.

(*n*) *Vide supra*, pp. 21—23, and p. 25. (*o*) (1789), 3 T. R. 497.

(*p*) (1841), 1 Q. B. 170. Compare the decision as to the non-commissioned officer's quarters in *Pearson v. Holborn Union*, [1893] 1 Q. B. 389; Ryde's Rat. App. (1891—1893), 303, at p. 313.

(*q*) (1852), 7 Ex. 650. See also *Lancashire JJ. v. Stretford* (1858), E. B. & E. 225.

not absolutely within the prison walls. But in *Gambier v. Overseers of Lydford* (r), it was held that quarters provided for prison officers *outside* a prison were rateable, but that similar quarters *inside* the prison were not rateable, unless the accommodation provided was in excess of what was necessary for the performance of the officers' duties.

The decision as to the rateability of the "excess" was followed, as to quarters of military officers, in *R. v. Stewart* (s), in which it was said that the station of the person occupying must be taken into account, that accommodation for a wife and family was not necessarily excessive, and that a trifling excess ought to be disregarded (t).

Houses in which police officers were required to reside were held not rateable in *R. v. St. Martin's, Leicester* (u); but, where the house was a quarter of a mile from the police station, it was held to be not exempt, on the ground that the officer had an independent occupation, the house being given him as part of his remuneration (x). So, too, where police officers lived in residences, built round a court, each having a front door opening into the court, and the police offices and cells were about a mile distant, the officers were all held rateable, including the chief constable, who was bound to reside there (y). But where police officers were compelled to reside in houses which adjoined the police station, though the front doors opened into the street, they were held not rateable (z). In a later case (a) the premises in question had formerly been the lodge of a prison, since pulled down, but were now used as residences for two police constables, one of the old cells adjoining being retained and kept ready for use as a cell. It was held that the premises as a whole were not exempt; and that the question was whether the main purpose of the building as a whole was for police purposes, with a residence attached, or whether the main purpose was for residences, with a part attached, used for police purposes. It must be noted that this decision merely negatived the decision of the sessions that the whole was exempt, and that the judgment expressly left undecided the question whether any deduction for the cell should be made. A mere stipulation that a constable shall reside in a particular house, belonging to the chief constable, does not exempt the

(r) (1854), 3 E. & B. 346.

(s) (1857), 8 E. & B. 360.

(t) Cf. *R. v. Terrott* (1803), 3 East, 506.

(u) (1867), L. R. 2 Q. B. 493. See also *Macharg v. Stoke-upon-Trent* (1884), 48 J. P. 775.

(x) *Martin v. West Derby Union* (1883), 11 Q. B. D. 145.

(y) *Showers v. Chelmsford Union*, [1891] 1 Q. B. 339; Ryde's Rat. App. (1891—1893), 259. This decision, so far as it relates to the chief constable, is not easily reconciled with *R. v. Shepherd* (1841), 1 Q. B. 170, *supra*, p. 98.

(z) *Cross v. West Derby Union* (1899), 16 T. L. R. 120.

(a) *Monmouth Overseers v. Monmouthshire County Council*, [1902] 66 J. P. 788.

house from rateability, if the constable has no duties to perform there (*b*).

The cases above cited seem to show that if the dwelling-house is included in, or structurally forms part of, a building which, as a whole, is occupied for Crown purposes, it is much easier to make good the claim to exemption, than if the dwelling-house is a separate building standing by itself; and that the question whether there is an independent occupation of the house by the officer, is a question of fact, depending partly on the terms of his employment, partly on the structural condition of the house.

Property maintained for civil purposes out of public money.—There is a group of cases which, in the writer's opinion, are not easily reconciled with each other.

In *R. v. Shee* (*c*), that part of the National Gallery which, by the permission of the Crown, was appropriated to the Royal Academy, was held to be exempt for the following reasons: (1) because the building was the property of the Crown or of the public (which terms were expressly stated to be synonymous); (2) because there was no beneficial occupation, apart from the purposes of the Royal Academy; (3) because the members of the Academy might be considered as agents of the Crown, for furthering national and public objects; (4) because the Crown might at any time resume possession.

The last reason seems to be bad, if it be true that a tenant at will is rateable as long as he is in occupation (*d*). As to the other reasons, it might, at first sight, seem sufficient to say that the case was decided before *Jones v. Mersey Docks* (*e*), and is, therefore, now overruled. But in *R. v. McCann* (*f*), BLACKBURN, J., who delivered the opinion of the majority of the judges in the *Mersey Docks Case*, said that that case had left untouched the principle of *R. v. Shee*.

In *R. v. Temple* (*g*), a normal and model school was held not exempt. Land had been purchased by the Treasury, and conveyed to a trustee, on behalf of the Committee of Council on Education. Masters were appointed by the Committee, and resided on the premises. Part of the land was let, but the rents, with annual payments from the scholars, were insufficient to meet the expenses of the school, and the deficiency was made good by the Committee of Council, out of money voted by Parliament for the promotion of public education. Now, the effect of holding the property not exempt was that the rate would have to be paid

(*b*) *R. v. Bridgchouse* (1869), 20 L. T. 658; see also *Macharg v. Stoke-upon-Trent* (1884), 48 J. P. 775.

(*c*) (1843), 4 Q. B. 2.

(*d*) *Vide supra*, pp. 19, 20.

(*e*) (1865), 11 H. L. Cas. 443, *supra*, p. 89.

(*f*) (1868) L. R. 3 Q. B. 141, at p. 145, *infra*, p. 101.

(*g*) (1853), 2 E. & B. 160.

out of money voted by Parliament, "which by the theory of our law has been granted to Her Majesty" (*h*); and it seems on this ground very difficult to reconcile the decision with *R. v. McCann* (*i*).

It must be noticed that it was conceded that, if any part of the premises were rateable, the appellant (who was the principal of the school) was to be treated as occupier. But it seems that this admission conceals the fallacy of the decision. If the rate had been made upon the Committee of Council on Education, who were clearly the occupiers of the school proper (whoever might be the occupier of the rooms allotted to the principal), it is submitted that the case would have been clearly covered by the principle of the decisions cited below.

In *De la Beche v. St. James', Westminster* (*k*), the Museum of Practical Geology in Jermyn Street was held exempt. It was founded and maintained out of money voted by Parliament by the Commissioners of Woods, under the control of the Treasury. There being no admission that any of the officers of the museum were in occupation, the Court held that the premises were in the exclusive possession of the Crown for public purposes.

In *R. v. McCann* (*l*), the Commissioners of Works were empowered to construct a bridge at Chelsea, with money borrowed from the Treasury on the security of the tolls, which were to be applied in payment of the expenses of maintenance, and then in repayment of the sum borrowed. It was held that the Commissioners were not liable to be rated, as they occupied the bridge as servants of the Crown; and it was pointed out that the Commissioners would hold the surplus tolls (if any) as the property of the Crown, and that to enforce the rate by the sale of the Commissioners' chattels would involve a seizure of the chattels of the Crown.

It may be noticed that precisely the same result would have followed in *R. v. Temple* (*m*) if the Committee of Council had been rated.

Crown property made rateable by special enactment.—In one or two instances the liability to rates, in the case of property acquired by the Crown, has been expressly preserved, either to the full extent (*n*) or to the amount at which the land was rateable at the date of such acquisition (*o*).

(*h*) *Per* BLACKBURN, J. : *R. v. McCann* (1868), L. R. 3 Q. B. 141, at p. 147.

(*i*) *Vide infra*.

(*k*) (1855), 4 E. & B. 385.

(*l*) (1868), L. R. 3 Q. B. 141, 677. (*m*) (1853), 2 E. & B. 160, *supra*, p. 100.

(*n*) See, for example, the Military Forces Localisation Act, 1872 (35 & 36 Vict. c. 68), s. 11. Compare as to land tax the Public Offices Site Act, 1882 (45 & 46 Vict. c. 32), s. 10. See also, as to a local paving rate, the Crown Estate Paving Act, 1851 (14 & 15 Vict. c. 95), s. 28.

(*o*) Compare the exemption of lunatic asylums and burial grounds, *infra*, p. 122.

Thus, by s. 22 of the Telegraph Act, 1868 (31 & 32 Vict. c. 110), "all land, property, and undertakings purchased or acquired by the Postmaster-General under this Act, shall be assessable and rateable in respect to local, municipal, and parochial rates, assessments, and charges at sums not exceeding the rateable value at which such land, property, and undertakings were properly assessed or assessable at the time of such purchase or acquisition" (*p*).

This section, which at first sight appears merely to impose a liability, has been construed so as to create a partial exemption; for it has been held (*q*) that the section applies to property acquired under the Act, after all use for the purposes of the Act has ceased, and the property has been let to a tenant. In the case referred to, the Court left undecided the question whether the section would apply to property after it had been sold by the Postmaster-General (*r*).

Notwithstanding the section above quoted, there seem to be no means of enforcing payment of rates against the Postmaster-General, and he can (in effect) pay as little as he pleases (*s*).

(*p*) Similar provision is contained in 23 & 24 Vict. c. 112, s. 33, as to land acquired by the Secretary of State for War under that Act; and in 28 & 29 Vict. c. 49, s. 5, as to the law courts; and in 28 & 29 Vict. c. 87, s. 12, and 48 & 49 Vict. c. 45, s. 10, as to land acquired by the Postmaster-General under those Acts.

(*q*) *Overseers of St. Gabriel, Fenchurch v. Williams* (1886), 16 Q. B. D. 649.

(*r*) *Cf. R. v. Worcester Guardians* (1853). 1 W. R. 146.

(*s*) *R. v. Postmaster-General* (1873), 21 W. R. 459; 28 L. T. 337.

CHAPTER VIII.

LITERARY AND SCIENTIFIC SOCIETIES.

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The Scientific Societies Act, 1843.—By s. 1 of this Act (*a*) an exemption is given to land, houses, and buildings “belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes, provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members, and provided also that such society shall obtain the certificate of the barrister” appointed to certify the rules of friendly societies (*b*). By s. 2, one copy of the rules (when certified) is to be transmitted to the clerk of the peace for the borough or county in which the land or buildings claimed to be exempt are situated, and “shall by him be laid before the recorder or justices . . . at the [next] general quarter sessions or adjournment thereof, . . . and the recorder or justices then and there present are hereby authorised and required, without motion; to allow and confirm the same,” and such copy is to be filed.

By s. 5 if the barrister refuses the certificate, the society may apply to Quarter Sessions, who may, if they think fit, order the rules to be filed, notwithstanding such refusal; and by s. 6 any person assessed to any rate from which the society is exempted may appeal to quarter sessions against the grant of a certificate.

By the Local Government Act, 1888, s. 3 (xv.), certain “administrative business of the justices of the county in quarter sessions,” including “all business done by the quarter sessions in respect of

(*a*) 6 & 7 Vict. c. 36 : see Appendix II., *infra*.

(*b*) Now the central office under the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25, s. 2).

the registration of rules of scientific societies under " the Scientific Societies Act, 1843, is transferred to the county council.

It is not very easy to determine what the "administrative business" thus transferred includes; but it is submitted that it includes the filing of the rules under s. 2 of the Scientific Societies Act, 1843, but does not include the hearing of appeals against the certificate under s. 6, nor, perhaps, the making of an order under s. 5; because such business is judicial business: *cf.* s. 8 of the Local Government Act, 1888. The effect of the Act of 1888 in quarter sessions boroughs appears to be as follows: In the case of a county borough, the "administrative business" (whatever that may be) is transferred to the borough council under s. 34 (1) (c); and in the case of any other quarter sessions borough (whether with a population of more or less than 10,000) the "administrative business" is transferred to the county council under s. 35 (1), s. 36 (1), s. 37, and s. 38 (5) of the same Act. In the metropolis, including the city of London, the "administrative business" is transferred to the London County Council, under s. 40 (6), and s. 41 (1) of the same Act.

Conditions which must be complied with.—A society, in order to claim the exemption given by the Scientific Societies Act, 1843, must comply with four conditions (*c*), viz.:

(1.) It must be a society instituted for the purpose of science, literature, or the fine arts exclusively (*infra*);

(2.) It must be supported, wholly or in part, by annual voluntary contributions (*infra*, p. 106);

(3.) It must be a society which shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members (*infra*, p. 107); and

(4.) It must obtain a certificate (*infra*, p. 108).

"Literature, science, or the fine arts, exclusively."—The word "exclusively" is "anxiously introduced both into the preamble and the enactment" (*d*). It is submitted that if the society be instituted for two purposes, one of which is within the Act, while the other is not, the society cannot claim exemption, even though the society be in fact carried on solely to promote that purpose which is within the Act. Thus a society instituted to promote the study of literature and chess would not be exempt, even though the society in practice confined its efforts exclusively to literature.

The "fine arts" seem to be distinguished from the "arts" (*e*).

(*c*) *Royal College of Music v. Westminster Vestry*, [1898] 1 Q. B. 809, at p. 817.

(*d*) *R. v. Cockburn* (1852), 16 Q. B. 480, at p. 491; *Commissioners of Inland Revenue v. Forrest* (1890), 15 App. Cas. 334, at p. 352.

(*e*) *Per FIELD, J. : R. v. Institution of Civil Engineers* (1879), 5 Q. B. D. 48, at p. 52.

Music is a "fine art" within the statute, and the Royal College of Music (incorporated for the advancement of music by means of a teaching or examining body) has been held to be exempt (*f*).

The following societies have been held to be within the exemption: The Linnæan Society (*g*), the Bradford Library and Literary Society (*h*), and the Birmingham New Library (*i*), though the libraries contained novels, magazines, and periodicals; the Royal Manchester Institution (*k*), founded "for the promotion of literature, science, and the arts," although it received money in respect of the exhibition and sale of works of art in the building. But in some of these cases the question whether the institution was supported by "voluntary contributions" may have to be reconsidered with reference to the decision of the House of Lords in *Overseers of Savoy v. Art Union of London* (*l*). Institutions having a reading-room furnished with newspapers have been held not exempt (*m*).

The following societies have been held *not* exempt: The Zoological Society (*n*); the Working Men's Educational Union, founded "for the elevation of the working classes as it regards their physical, intellectual, moral, and religious condition" (*o*); the British and Foreign School Society, founded "to promote education in general" (*p*); the United Service Institution (*q*); the Institution of Civil Engineers (*r*). Some doubt has been thrown upon the decision, or upon the reasons for the decision, in the last case by a more recent decision in the House of Lords (*s*) that the property of the same institution was applied "for the promotion of science" and therefore exempt from the duty imposed by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), s. 11; and this decision has been said to overrule *R. v. Institution of Civil Engineers* (*t*). A society (such as the Religious Tract Society) founded for the promotion of purposes of

(*f*) *Royal College of Music v. Westminster Vestry*, [1898] 1 Q. B. 809. See also *R. v. Brandt* (1851), 16 Q. B. 462.

(*g*) *Churchwardens of St. Anne v. Linnæan Society* (1854), 3 E. & B. 793.

(*h*) *Bradford Library Society v. Churchwardens of Bradford* (1858), 1 E. & E. 88.

(*i*) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868. See also *Liverpool Library v. Mayor, etc., of Liverpool* (1860), 29 L. J. M. C. 221; and (as to the London Library) *Earl of Charendon v. St. James's, Westminster* (1852), 20 L. J. M. C. 213.

(*k*) *R. v. Overseers of Manchester* (1851), 16 Q. B. 449.

(*l*) [1896] A. C. 296, *infra*, p. 107.

(*m*) *Russell Institution v. St. Giles* (1854), 3 E. & B. 416; *R. v. Gaskell* (1851), 16 Q. B. 472; *Purchas v. Holy Sepulchre* (1854), 4 E. & B. 156; *R. v. Phillips* (1848), 8 Q. B. 745; see p. 750 *n.*, and p. 754.

(*n*) *Marylebone Vestry v. Zoological Society* (1854), 3 E. & B. 807.

(*o*) *Scott v. Overseers of St. Martin-in-the-Fields* (1855), 5 E. & B. 558.

(*p*) *R. v. Pocock* (1846), 8 Q. B. 729.

(*q*) *R. v. Cockburn* (1852), 16 Q. B. 480; 21 L. J. M. C. 53.

(*r*) *R. v. Institution of Civil Engineers* (1879), 5 Q. B. D. 48.

(*s*) *Commissioners of Inland Revenue v. Forrest* (1890), 15 App. Cas. 334. See also *In re Royal College of Surgeons*, [1899] 1 Q. B. 871, which was decided on the Customs and Inland Revenue Act, 1885, s. 11.

(*t*) See *Royal College of Music v. Westminster Vestry*, [1898] 1 Q. B., at p. 313.

religion by literary means would probably not be held to be within the exemption (*u*).

The Art Union of London (which distributed pictures, etc., to its subscribers) was held to be instituted for the purposes of the fine arts exclusively, but it failed on other grounds to secure the exemption (*x*). The Royal Medical and Chirurgical Society of London was held to be established for purposes of science exclusively, but it failed on other grounds (*y*). The Jenner Institute of Preventive Medicine was held to be not exempt (*z*).

A society which would otherwise be within the exemption may lose it if the buildings are sublet (*a*), even if sublet to other scientific societies which are not certified (*b*); but the exemption is preserved if the parts underlet are separately rated (*c*). The lending of a building gratuitously on one occasion only for purposes other than those of the institution does not take away the exemption (*d*). Rooms occupied by a librarian and porter required for the purposes of the society are within the exemption (*e*). A society founded for the gratification or convenience of the members only, and not for the good of others, is not within the exemption (*f*). But the fact that the benefits of a society are almost exclusively limited to the members does not of itself destroy the exemption (*g*). But this fact may affect the question whether the contributions of the members are "voluntary contributions," as will be seen hereafter. There can be no exemption if a society instituted for purposes of science, literature, or the fine arts, occupy for other purposes at the time the rate is made: the practice, in fact, and not merely the statement of the purposes of the society, must be looked at (*h*).

Voluntary Contributions.—In order to be entitled to exemption under the Scientific Societies Act, 1843, the society must be supported "wholly or in part by annual voluntary contributions." The word "voluntary" is used, not as the antithesis of something done under compulsion, but in the sense in which a lawyer speaks of a "voluntary conveyance," or in which a hospital is said to be

(*u*) *R. v. Jones* (1846), 8 Q. B. 719.

(*x*) *Overseers of Savoy v. Art Union of London*, [1896] A. C. 296: *vide infra*, p. 107.

(*y*) *R. v. Royal Medical and Chirurgical Society* (1857), 30 L. T. (o.s.) 133.

(*z*) *Jenner Institute v. St. George's, Hanover Square*, [1900] Ryde & Konstam's Rat. App. (1894—1904), 242.

(*a*) *Purvis v. Traill* (1849), 3 Ex. 344; *R. v. Royal Medical and Chirurgical Society*, *supra*.

(*b*) *Ducl of Clarendon v. St. James', Westminster* (1852), 20 L. J. M. C. 213.

(*c*) *R. v. Overseers of Manchester* (1851), 16 Q. B. 449. See also *Churchwardens of St. Anne v. Linnean Society* (1854), 3 E. & B. 793.

(*d*) *R. v. Brandt* (1851), 16 Q. B. 462, at p. 471.

(*e*) *Churchwardens of St. Anne v. Linnean Society* (1854), 3 E. & B. 793. *Cf. Pearson v. Holborn Union*, (1893) 1 Q. B. 389, as to the quarters of the non-commissioned officers.

(*f*) *R. v. Brandt* (1851), 16 Q. B. 462; *R. v. Gaskell* (1851), *ibid.*, p. 472; *R. v. Cockburn* (1852), *ibid.*, p. 480.

(*g*) *Bradford Library Society v. Churchwardens of Bradford* (1858), 1 E. & E. 88.

(*h*) *Purvis v. Traill*, *supra*; *Purhas v. Holy Sepulchre* (1854), 4 E. & B. 156.

“supported by voluntary contributions” (*i*). It implies that the person contributing gives “from disinterested motives, not looking for any return in the shape of direct personal advantage” (*k*). In the *Art Union Case* (cited in the note) each contributor received the equivalent of his contribution in the market value of the pictures which were distributed, and it was held that the contributions were not voluntary (*l*).

This decision seems to prove that if the contributor gets something of value beyond an intellectual advantage (scientific, literary, or artistic, as the case may be), his contribution is not “voluntary” within the Act; perhaps the case further decides that if the contribution is made merely to gain an intellectual advantage for the personal benefit of the contributor, the contribution is not voluntary. If so, some of the earlier cases, in which subscription libraries were held to be exempt (*m*), must be regarded as overruled.

Division of money among members of the society.—The Scientific Societies Act, 1843, s. 1, requires that the society, to obtain exemption, “shall not, and by its laws may not, make any dividend, gift, division, or bonus in money” to its members. This means that the society must adopt some express rule to that effect, and it is not enough that its laws should contain nothing to countenance such sharing of profits (*n*). But the statute applies only to laws of the society as a continuing body, and therefore does not prohibit a division of the property of the society, upon its dissolution, among the members (*o*), even though there be an express rule providing for such division (*p*). So, too, the fact that a member, even by the express rules of the society, may sell his share at its market value, and so may possibly make a profit, does not destroy the exemption (*q*). The “dividend, gift,” etc., which the statute forbids, do not include payments made to members by way of remuneration for services rendered to the society, and not made to them as being members; so that the Royal College of Music was held to be exempt although some of the members were paid for teaching music (*r*).

(*i*) *Overseers of Savoy v. Art Union of London*, [1896] A. C. 296, per Lord HALSBURY, L.C., at p. 305. This decision overrules (on this point) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 863; possibly some other cases.

(*k*) *Overseers of Savoy v. Art Union of London*, [1896] A. C., at p. 312. See also *Russell Institution v. St. Giles* (1854), 3 E. & B. 416.

(*l*) Cf. *Vestry of Marylebone v. Zoological Society* (1854), 3 E. & B. 807; *Russell Institution v. St. Giles*, *supra*. See also *In re New University Club* (1887), 18 Q. B. D. 720, decided on the meaning of the words “funds voluntarily contributed,” in s. 11 of the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51).

(*m*) *Vide supra*, p. 105.

(*n*) *R. v. Jones* (1846), 8 Q. B. 719.

(*o*) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868.

(*p*) *R. v. Overseers of Manchester* (1851), 16 Q. B. 449.

(*q*) *Bradford Library Society v. Churchwardens of Bradford* (1858), 1 E. & E. 88; *Liverpool Library v. Mayor, etc., of Liverpool* (1860), 29 L. J. M. C. 221.

(*r*) *Royal College of Music v. Westminster Vestry*, [1898] 1 Q. B. 809.

Effect of barrister's certificate.—The certificate of the barrister that a society is entitled to exemption is a condition precedent to the claim of exemption, but not conclusive proof of the right thereto (*s*). And if a society, after receiving the certificate, be rated notwithstanding, they must appeal against the rate, and cannot rely upon their exemption when a distress warrant to enforce payment of the rates is applied for (*t*).

Time for appealing against certificate.—After notice of the filing of the certificate has been given to the collector of rates, an appeal to quarter sessions against the certificate, brought within four months next after the first rate made after such notice, is within the time prescribed by the Scientific Societies Act, 1843, s. 6, even though the appeal is not within four months after the first rate made after the filing (*u*). And in such an appeal a recital in the order of sessions that the appellant was a "rate-payer" is sufficient to show that he was "assessed to the rates" as required by the statute (*x*).

It may be doubted whether the limit of time for appealing against the barrister's certificate is of much practical importance: for it seems that, although the time for entering an appeal has expired, the parochial authorities may at any time rate a society, even though the exemption under the certificate has been allowed for years (*y*), and the society must then appeal against the rate to establish their right to exemption (*z*).

(*s*) *R. v. Phillips* (1848), 8 Q. B. 745, following *R. v. Pocock* (1846), 8 Q. B. 729. In the former case the effect of a decision on appeal against the grant or refusal of a certificate was considered.

(*t*) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868: *vide infra*, p. 622.

(*u*) *R. v. Pocock* (1846), 8 Q. B. 729. The section is set out in Appendix II.

(*x*) *R. v. Stacey* (1850), 14 Q. B. 789.

(*y*) The exemption was thus contested in *Russell Institution v. Vestry of St. Giles* (1854), 3 E. & B. 416. Many of the other cases above cited seem to have followed the same course, though the reports do not expressly say so.

(*z*) See *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868.

CHAPTER IX.

CHURCHES, CHAPELS, AND SCHOOLS.

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Churches and chapels.—The Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30), by ss. 1, 2, exempts from poor rates—

“ churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act or Acts now in force: Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage.

“ 2. Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor.”

Before the passing of this Act, the trustees of a chapel who received no pew rents were held not rateable (*a*): but the trustees of a chapel who received pew rents had been held rateable (*b*), although they expended the whole of what they received in repairs, etc., and in payments to the attendants and to the preachers. In both these cases, the decision turned on the receipt, or non-receipt, of profits, and not on appropriation to religious purposes.

The certifying of places of religious worship is now regulated by the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81): see s. 3 of that Act, as to the effect of registration thereunder.

(*a*) *R. v. Woodward* (1792), 5 T. R. 79. Apart from the statutory exemption, it seems clear that the mere absence of profit would not now be ground for exemption: see *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235; 17 Q. B. D. 733, *infra*, pp. 138, 154.

(*b*) *R. v. Agar* (1811), 14 East, 256.

Exemption is given to churches, chapels, etc., and buildings used for the gratuitous education of the poor, or public charity, by s. 168 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34) ; but the Act applies only when it is incorporated with some other Act, and thereby made applicable to some town or district (s. 1), and the exemption extends only to rates made under that Act, or the Act with which it is incorporated. Note also that s. 168 is *not* one of the sections made applicable to urban districts by s. 160 of the Public Health Act, 1875.

It is very difficult to construe s. 1 of the Poor Rate Exemption Act, 1833. It is submitted that the words "exclusively appropriated to public religious worship" (in the second line of the passage printed above) must apply to the words "churches, district churches, chapels, meeting-houses, and premises," and cannot be limited to the words "or such parts thereof," as the grammar of the sentence would suggest. The word "premises," at all events, cannot be left without qualification. The beginning of the section should therefore be read thus:—"churches, district churches, chapels, meeting houses, or premises which shall be exclusively appropriated to public religious worship, or such parts thereof as shall be so appropriated." The use of the phrase "*and which*" in the following clause (which as it stands is hopelessly ungrammatical) suggests that in the original draft the skeleton of the sentence was in this form:—"churches, chapels, or premises which shall be exclusively appropriated," etc., "*and which* shall be duly certified, etc.;" and that the subsequent insertion of the clause relating to "parts of premises exclusively appropriated," etc. has dislocated the arrangement.

It seems clear that the proviso to s. 1 of the Poor Rate Exemption Act, 1833, does not take away the exemption unless *both* the conditions mentioned are fulfilled; *i.e.*, unless (1) the parts are not exclusively appropriated to public religious worship; *and* (2) rent, profit, or advantage is received therefrom. So that if a chapel is exclusively appropriated to public religious worship, the receipt of pew rents does not destroy the exemption.

College chapels were held rateable in the *Oxford University Rate Case* (c).

The extent of the exemption was considered in *Charrington v. Mile End, Old Town* (d). In *Trustees of College Street Church v. Edinburgh Parish Council* (e), it was held that church and mission halls, sometimes used for temperance meetings, penny readings, and the like, were not within the exemption given by

(c) (1857), 8 E. & B. 184, at p. 211; *vide infra*, p. 179, as to the measure of value.

(d) Ryde's Rat. App. (1891—1893), 14; *coram* the London Quarter Sessions.

(e) [1901] 3 F. 414.

the Rating Exemptions (Scotland) Act, 1874 (37 & 38 Vict. c. 20), which is similar to the Poor Rate Exemption Act, 1833. In *Booth v. St. Martin, Worcester(f)*, it was held at quarter sessions that Salvation Army barracks were not exempt under the Act of 1833.

Sunday and ragged schools.—The exemption from rateability conferred on rooms used for Sunday schools, etc., by the Poor Rate Exemption Act, 1833 (cited above), was still further extended by the Sunday and Ragged Schools (Exemption from Rating) Act, 1869 (32 & 33 Vict. c. 40), which provides as follows:

“1. Every authority having power to impose or levy any rate upon the occupier of any building or part of a building used exclusively as a Sunday school or ragged school *may* exempt such building or part of a building from any rate for any purpose whatever which such authority has power to impose or levy: Provided, that nothing in this Act contained shall prejudice or affect the right of exemption from rating of Sunday or infant schools, or for the charitable education of the poor in any churches, district churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, by virtue of the Poor Rate Exemption Act, 1833.

“2. A ‘Sunday school’ shall mean any school used for giving religious education gratuitously to children and young persons on Sunday, and on week-days for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom.

“A ‘ragged school’ shall mean any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed.”

It was held in *Bell v. Crane(g)*, that under this Act the rating authority have a discretion whether they will or will not exempt the buildings which are within the Act.

Voluntary schools.—The Voluntary Schools Act, 1897 (60 & 61 Vict. c. 5), enacts by s. 3 as follows:

“No person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices, or playground of a voluntary school, except to the extent of any profit derived by the managers of the school from the letting thereof.”

By s. 4, “voluntary school” means a public elementary day school not provided by a school board: and “local rate” means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority

(f) [1884] 48 J. P. 441.

(g) (1873), L. R. 8 Q. B. 481.

or officer, is, or can be ultimately raised out of a local rate as before defined.

In *Commissioners of Royal Patriotic Fund v. Mayor, etc., of Wandsworth* (*h*), it was held that, although the term "day school" in the definition meant a day school, as opposed to an evening school, yet a boarding-school in which the children were educated in cookery, household and laundry work, and other things which would fit them for domestic service, was not within the exemption.

It seems that the exemption given by the Voluntary Schools Act, 1897, will extend to schools not provided by a local education authority under the Education Act, 1902 (2 Edw. VII., c. 42), but not to schools provided by such an authority (*i*).

(*h*) [1903] 67 J. P. 311 ; 19 T. L. R. 517. This decision appears to over-rule the ground of the decision of the London Quarter Sessions in *Jews' Deaf and Dumb Home, Wandsworth v. Wandsworth and Clapham Union* (1901), 65 J. P. 137 ; in which a boarding school, supported in part by voluntary contributions, and in part by payments from school boards and the Education Department, was held not exempt.

(*i*) This seems to be the effect intended by s. 25 (2) and Sched. III. (1), and (10) of the Education Act, 1902.

CHAPTER X.

AGRICULTURAL LAND AND TITHES.

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The Agricultural Rates Act, 1896.—By s. 1 of this Act (*a*), which is of a temporary character (*b*), "the occupier of agricultural land . . . shall be liable, in the case of every rate to which this Act applies, to pay one half only of the rate in the pound payable in respect of buildings and other hereditaments." It must be specially noticed that the partial exemption given by the Act to agricultural land is effected by halving the rate, leaving the rateable value unaltered. The Act has made no change whatever in the principles of valuation; the rateable value of agricultural land will be ascertained as before, but, when ascertained, it will be entered in a separate column in the valuation list and rate-book (*c*).

The effect of s. 1 (2), and the definition of "rate" in s. 9 of the Agricultural Rates Act, 1896, is that the Act applies to all rates (in the ordinary sense of the word), except rates made by commissioners of sewers, and rates in respect of which the occupier of agricultural land was already liable to pay half, or less than half, of the rate charged on buildings and other hereditaments. For the purposes of this volume, it is sufficient to point out that the poor rate is clearly one of the rates to which the Act applies (*d*).

The definition of "agricultural land."—By s. 9 of the Agricultural Rates Act, 1896, "agricultural land" means "any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds,

(*a*) 59 & 60 Vict. c. 16: see Appendix II., *infra*.

(*b*) Originally in force for five years only, but extended to March 31st, 1906, by 1 Edw. 7, c. 13.

(*c*) See s. 5 of the Agricultural Rates Act, 1896, and Forms W, W2, X, Y and Y2, in the schedule to the Agricultural Rates Order, 1896, in Appendix II., *infra*.

(*d*) A detailed examination of the rates to which the Act applies, or does not apply, will be found in the edition of the Agricultural Rates Act, 1896 (Shaw & Sons), by the present writer, at pp. 10—18.

orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse."

The earlier part of this definition (down to "allotments") is founded on ss. 211, 230, of the Public Health Act, 1875 (as amended by the Public Health (Rating of Orchards) Act, 1890, and the Allotments Rating Exemption Act, 1891), which relate to the general district rate, and the rate for "special expenses" of a rural sanitary authority; but it will be seen that the Public Health Act, 1875, and the Agricultural Rates Act, 1896, do not necessarily use the same words in the same sense (*e*).

Arable, meadow, or pasture ground : park.—The definition of "agricultural land" includes land used as "meadow or pasture ground *only*," but excludes "land kept or preserved *mainly or exclusively* for purposes of sport or recreation." It appears that the question whether the land is used as "meadow or pasture ground *only*" is almost entirely a question of fact, depending upon the meaning which would be given to the words "meadow or pasture ground" in ordinary parlance. Notwithstanding the use of the word "*only*," it is submitted that land which would ordinarily be described as "meadow or pasture," but which was occasionally (but not mainly or exclusively) used for purposes of sport or recreation, would come within the definition, provided the use for purposes of sport or recreation were made subservient to the use of the land as "meadow or pasture"; for in such a case the land could not be said to be "kept or preserved" for purposes of sport, and so would not come within the exception.

The question whether land is taken out of the definition of "agricultural land," as being a "park," seems to be also a question of fact: reference may be made to *Overseers of Hwish and Lord Clifton v. The Surveyor of Taxes* (*f*), in which a home farm, worked by a bailiff of the landowner for him, was held not to be a park. If sporting rights over agricultural land increase its value, the exemption (it is submitted) extends to the whole, unless the sporting rights are separately rated (*ff*).

A question has been raised, but (it is believed) not decided by any court, whether a sewage farm, worked on the broad irrigation system, is "agricultural land" within the Act of 1896. The method of cultivation adopted on different farms may vary, and the question whether any particular farm is cultivated as "arable, meadow, or pasture ground" is a question of fact. But if in fact

(*e*) See *Smith v. Richmond*, [1899] A. C. 448, *infra*, p. 116.

(*f*) [1897] 61 J. P. 487.

(*ff*) Compare *Alton U. D. C. v. Spicer*, (1904) 20 T. L. R. 296; decided on s. 211 (1) (*b*) of the Public Health Act, 1875.

the farm is so cultivated, it is submitted that, as a matter of law, the farm does not lose the exemption merely because the object of the cultivation is to dispose of sewage. In some cases a sewage farm has been let to a tenant of the local authority to whom the farm belongs, and it is difficult to contend that such a tenant is not entitled to the same exemption as the tenant of an ordinary farm. And if the tenant of a sewage farm is exempt, there appears to be no reason why the local authority owning the farm, if they retain it in their own hands and cultivate it in the same way, should not be equally exempt.

The question may also arise whether the pipes and tanks used for the distribution of sewage are to be rated as buildings, assuming that the farm generally is rated as "agricultural land." It is submitted that this is a question of degree. In rating an ordinary farm, the fences, drains, and ditches are always rated as "agricultural land," and not as buildings; and open channels on a sewage farm should (it is submitted) be rated in the same way. On the other hand, the main outfall sewer and any large reservoir for sewage, constructed above the natural surface level of the ground, would probably be held to be rateable as "buildings or other hereditaments not being agricultural land."

The question, whether the tenant of a sewage farm is the occupier of all the sewage works on the farm, has been already considered (g).

Cottage gardens: allotments.—The meaning of the term "cottage garden," which must be interpreted with reference to the term "cottage" (defined by s. 9 of the Agricultural Rates Act, 1896, as "a house occupied as a dwelling by a person of the labouring class"), ultimately depends on the meaning of the term "labouring class." The Allotments Act, 1887 (*h*), is entitled "An Act to facilitate the provision of allotments for the labouring classes," and in s. 2 (1) of that Act, the term "labouring population" is used to describe the persons to whom allotments provided by a local authority are to be let; and as to the meaning of "labouring population," the law officers of the Crown are believed to have advised the Local Government Board as follows (some months before the Agricultural Rates Act, 1896, was introduced): "that the expression means the population that, in substance, makes a living by manual labour; that it includes all such as smiths, ploughmen, carpenters, artificers, workers in factories, and others whose work is in the main manual, though knowledge and skill also be required; but that it does not include those whose work is in the main a matter of knowledge and skill, though manual labour also be required, such as nurses, cooks, postmasters, clerks, or tradesmen in general; and that the line of demarcation

(g) *Vide supra*, p. 50.

(h) 50 & 51 Vict. c. 48.

is that above indicated, but that it is impossible to lay it down with precision, and that each case must depend on its own facts."

This opinion, though it has not the effect of a judicial decision, would probably be regarded as evidence of the construction in practice put upon the words "labouring population," before the passing of the Agricultural Rates Act, 1896. Reference may also be made to the definition of "labouring classes" in s. 5 (7) of the Metropolitan Police Act, 1886 (*i*).

It is submitted that the words "labour" and "labourer" may have different meanings according to the context in connection with which they are used. Reference may be made to the cases cited in the note (*k*) by way of illustration, in considering who are the "labouring classes" within s. 9 of the Agricultural Rates Act, 1896.

It is important to notice that a cottage garden, in order to obtain the partial exemption given to "agricultural land," must exceed one quarter of an acre: but if the same piece of land can be regarded as an "allotment," there is no maximum or minimum limit as to size; nor is it clear that the person who holds it need belong to the "labouring classes," as is the case with a "cottage garden." It may not always be easy to draw the line between an "allotment" and a "cottage garden." The meaning of the term "allotment," as used in the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (*l*), was considered in *Cooper v. Pearse* (*m*).

Rates chargeable on allotments let by local authorities are recoverable, in the first instance, from the landlords: see Chapter IV., *supra*.

Market gardens: nursery grounds.—These words were used in s. 211 of the Public Health Act, 1875, and in *Purser v. Worthing Local Board* (*n*), it was held that land almost entirely covered with glass-houses, built on brick foundations, and used for growing fruit and vegetables for sale, was none the less a market garden or nursery ground. But in *Smith v. Richmond* (*o*), it was held that the enacting part (s. 1) of the Agricultural Rates Act, 1896, had made an antithesis between "land" and "buildings," that the terms were mutually exclusive, and, therefore, that land covered with buildings such as glass-houses (similar to those referred to in *Purser v. Worthing Local Board*) was not agricultural land at all.

(*i*) 49 & 50 Vict. c. 22.

(*k*) *Morgan v. London General Omnibus Co.* (1884), 13 Q. B. D. 832; 53 L. J. Q. B. 353; *Cook v. North Metropolitan Tramways Co.* (1887), 18 Q. B. D. 683; 56 L. J. Q. B. 309; 35 W. R. 577; 51 J. P. 620; *R. v. Worthing* (1851), 21 L. J. M. C. 44.

(*l*) 50 & 51 Vict. c. 26.

(*n*) (1887), 18 Q. B. D. 818.

(*m*) [1896] 1 Q. B. 562.

(*o*) [1899] A. C. 448.

Tithe rentcharge.—Under s. 1 of the Tithe Rentcharge (Rates) Act, 1899 (*p*), which follows the precedent set by the Agricultural Rates Act, 1896 (*q*), “the owner of tithe rentcharge attached to a benefice shall be liable to pay only one half of the amount of any rate to which the Act applies, which is assessed on him as owner of that tithe rentcharge”; and the other half of the rate is to be paid by the Commissioners of Inland Revenue. The Act of 1899 applies to rates payable in respect of payments in lieu of tithe (*r*).

The general effect of the Tithe Rentcharge (Rates) Act, 1899 (which is only a temporary Act), may be said to be to extend to tithe rentcharge the same partial exemption, until the same date (*s*), as is given to “agricultural land” by the Agricultural Rates Act, 1896. The deficiency in the local rate, created by the exemption, is made good under both Acts out of imperial taxation, though not quite in the same way.

The partial exemption conferred by the Act of 1899, on tithe rentcharge, is effected by halving the rate, leaving the principle of ascertaining the rateable value unaltered. That principle, together with the effect of the Act of 1899 on rateable value, and the rateability of tithes and payments in lieu of tithes, are considered in Chapter XXIII.

Extraordinary tithe rentcharge, payable under the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), is made altogether exempt from rates by s. 4 (5) of that Act, the rates having been deducted in calculating the capital value under s. 3.

(*p*) 62 & 63 Vict. c. 17; see Appendix II., *infra*.

(*q*) *Supra*, p. 113.

(*r*) See s. 2 (2), in Appendix II., *infra*.

(*s*) The Tithe Rentcharge (Rates) Act, 1899, and the Agricultural Rates Act, 1896, are alike extended to March 31st, 1906, by 1 Edw. 7, c. 13.

CHAPTER XI.

MISCELLANEOUS EXEMPTIONS.

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Partial exemption of canals under special Acts.—In many of the earlier Acts authorising the construction of canals, we find special clauses regulating the rating of the canals and their appurtenances. In some cases, there is a clause exempting the tolls from rateability altogether (*a*), or making them rateable only when personal property was, in fact, rated in each parish (*b*). In a larger number of Acts we find clauses fixing or limiting the rateable value of the canal and of the company's buildings, by a comparison with the value of lands and buildings lying near. It has been said (*c*) that these were inserted because the making of a canal was a work of great public utility; but it is possible that (in some cases at least) the clauses were inserted in consequence of the decisions as to the method of rating tolls (considered in Chapter XVII., *infra*), in order to protect the parishes from a risk of losing all rates on the land taken (*d*), and to fix (by a standard which was thought to be readily intelligible) a value which it would otherwise be very difficult to ascertain. The

(*a*) See *R. v. Cadder and Hibble Navigation* (1818), 1 B. & Ald. 263; *R. v. Monmouthshire Canal Co.* (1835), 3 A. & E. 619.

(*b*) See *R. v. Regent's Canal Co.* (1827), 6 B. & C. 720. At the dates of these Acts, personal property, though often not rated in practice, was in law rateable (*vide supra*, pp. 2—4), and tolls were also considered to be rateable *per se*: see Chapter XVI.

(*c*) See *R. v. Regent's Canal Co.* (1827), 6 B. & C. 720, at p. 728.

(*d*) See, for example, *R. v. Bristol Dock Co.* (1841), 1 Q. B. 535; *R. v. Chelmer and Blackwater Navigation Co.* (1831), 2 B. & Ad. 14, at p. 19.

clauses may also have been inserted to guard against the danger of the canal not being finished (*e*) or being abandoned (*f*).

Effect of exemption of canal tolls.—In *R. v. Calder and Hebble Navigation* (*g*), the special Act exempted the “rates and duties in respect of vessels navigating the canal”; and it was held that this exemption extended to the canal itself, because the rates and duties constituted the only value of the land. With this decision must be compared *R. v. Leeds and Liverpool Canal* (*h*), where the special Act exempted the canal tolls, but contained special directions as to the rating of the land taken for the canal, as land (*i*). A house built out of tolls which were exempt, and occupied by the company’s servant for the purposes of their business, was held rateable in — *v. Armstrong* (*k*).

Various clauses giving partial exemption to canal property.—In *R. v. Grand Junction Canal Co.* (*l*), the special Act provided that the company should be rated for their lands, grounds, and buildings “in the proportion as other lands, grounds, and buildings lying near the same are or shall be rated, and as the same lands, etc., would be rateable in case the same were the property of individuals in their natural capacity.” It was held that this did not mean that the company’s property was to be rated on the same proportion of the annual value as other property (*m*), but that it should be rated as if it had remained in the hands of farmers for the ordinary purposes of agriculture (*n*). Subsequently a difficulty arose in construing the same provision in a parish where some of the “lands lying near” the canal were used for agricultural purposes or as garden ground, but most of them would command a much higher rent for building purposes, or were in fact actually covered by buildings. It was held (*o*) that the value of the lands near, as building land, could not be taken into account, because a tenant from year to year would not take land for building purposes. But in *R. v. Glamorganshire Canal Co.* (*p*), where the special Act

(*e*) See *R. v. Grand Junction Canal Co.* (1818), 1 B. & Ald. 289, at p. 298. Compare also s. 133 of the Lands Clauses Consolidation Act, 1845 (set out in Appendix II. *infra*), which was “an Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature.”

(*f*) Compare *Glamorganshire Canal Co. v. Merthyr Tydfil Union*, [1903] 67 J. P. 52, *infra*, p. 120, note (*q*).

(*g*) (1818), 1 B. & Ald. 263.

(*h*) (1804), 5 East, 324.

(*i*) See also *R. v. Regent’s Canal Co.* (1827), 6 B. & C. 720; *R. v. Monmouthshire Canal Co.* (1835), 3 A. & E. 619.

(*k*) (1819), 2 Stark. 543.

(*l*) (1818), 1 B. & Ald. 289.

(*m*) Before the Parochial Assessments Act, 1836, it was a common practice to rate upon some proportion of the annual value, and not upon the whole; see p. 150, note (*c*).

(*n*) Cf. *R. v. St. Peter the Great, Worcester* (1826), 5 B. & C. 473. See also *R. v. Regent’s Canal Co.* (1827), 6 B. & C. 720; *R. v. Cholmer and Blackwater Navigation Co.* (1831), 2 B. & Ad. 14.

(*o*) *R. v. Grand Junction Canal Co.* (1859), 7 W. R. 597.

(*p*) (1860), 29 L. J. M. C. 238; 3 El. & El. 186; see also *Warwick and Birmingham Canal Co. v. Birmingham Guardians* (1872), 27 L. T. 487; 37 J. P. 150.

declared that the lands and grounds of the company (no mention being made of buildings) should be rated "in the same proportion as other lands and grounds lying near the same," and as the lands, etc., "would be rateable in case the same were the property of individuals in their natural capacity," it was held that the canal should be rated by ascertaining the aggregate value of all lands lying near, whether covered with buildings or not, and by bringing the value of all the lands lying near into hotchpot (*q*). But the difference in the language of the statutes was pointed out in a later case relating to the Grand Junction Canal Company (*r*), in which it was held that under that company's Acts, the lands (including apparently the canal) were to be rated as open lands lying near: the buildings in the same proportion as buildings: but that if the open lands lying near became of more value by being used as market gardens, or by buildings being erected in the neighbourhood, the value of the canal was to be increased in proportion, and was not to be limited to purely agricultural value (*s*).

The decision on the last point negatives the dictum in the first case relating to the Grand Junction Canal Company (*t*), that the land was to be rated "according to its value when first taken"; and it is further supported by decisions on similar clauses in *R. v. Monmouthshire Canal Co.* (*u*) and *R. v. Leeds and Liverpool Canal Co.* (*x*): in the last-mentioned case it was held that the measure of value was the general value borne at the time of the rate by land adjoining, not excluding the value which the land derived from the vicinity of the canal, but not reckoning the value which such land would acquire if applied to the purposes of a canal (*y*). In *Regent's Canal Co. v. St. Pancras* (*z*), the special Act directed that the lands of the company should be rated according to their quantity and quality, and their dwelling-houses, warehouses, etc., according to the nature and respective uses, dimensions and description thereof; and should be charged and assessed in like manner as lands of a like quality, and dwelling-houses, etc., of a like and similar size, nature, etc. The rating authorities contended, that in valuing the land, the value of

(*q*) It has recently been held that the Act renders the company liable to pay rates on the specified basis after the canal has ceased to be beneficially occupied, having been closed to traffic owing to subsidence caused by working coal underneath it: *Glamorganshire Canal Co. v. Merthyr Tydfil Union*, [1903] 67 J. P. 52.

(*r*) *Grand Junction Canal Co. v. Hemel Hempstead* (1870), L. R. 6 Q. B. 173.

(*s*) It was further held that the canal was not to be rated in proportion to land lying near, which was used for a railway, with reference to the value of that land, as improved by the railway.

(*t*) *R. v. Grand Junction Canal Co.* (1818), 1 B. & Ald. 289, at p. 293.

(*u*) (1835), 3 A. & E. 619.

(*x*) (1838), 7 A. & E. 671.

(*y*) An instance of an Act fixing the value at the time of acquisition as the rateable value for ever will be found in *R. v. Bristol Dock Co.* (1841), 1 Q. B. 535. See also the Lunatic Asylums Act, 1853, s. 35, *infra*, p. 122, and the Burial Act, 1855, s. 15, *infra*, p. 123.

(*z*) (1877), 3 Q. B. D. 73.

adjoining lands for all purposes, including building purposes, should be taken into account; and claimed to bring into account the value of land actually covered with buildings, by apportioning the total value between land and buildings. But the court held that such a mode of rating was wrong, and that the value of the company's land should be estimated with reference to that of land of a similar description not built upon, though it might be enhanced in value by the proximity of buildings.

In *Regent's Canal Co. v. Hendon* (a) an exemption given to lands "of and belonging to" the company was held to extend to lands of which the company might afterwards become the occupiers, whether they had a strict legal title as owners or not.

Instances, in which the exemption given to the undertaking originally authorised has been held to apply to extensions under subsequent Acts, will be found in the cases cited in the note (b).

Light railways.—With the special clauses (above referred to) relating to canals, we may compare s. 5 (1) of the Light Railways Act, 1896 (59 & 60 Vict. c. 48), which provides that where the Treasury make a special advance under that section as a free grant (to aid the making of the railway) the order authorising the railway may provide that the part of the railway in any parish "shall not be assessed to any local rate at a higher value than that at which the land occupied by the railway would have been assessed, if it had remained in the condition in which it was immediately before it was acquired for the purpose of the railway."

Exemption of certain lighthouses.—The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 430, exempted certain lighthouses from rateability. That Act is now repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which, however, by s. 731, re-enacts s. 430 of the earlier Act in language which for the present purpose may be regarded as identical. The section is as follows:

"All lighthouses, buoys, beacons, and all light dues, and other rates, fees or payments accruing to or forming part of the Mercantile Marine Fund, and all premises or property belonging to or occupied by any of the general lighthouse authorities or by the Board of Trade, which are used or applied for the purposes of any of the services for which the dues, rates, fees, and payments are received, and all instruments, or writings used by or under the direction of any of the general lighthouse authorities or of the Board of Trade in carrying on the services, shall be exempted from all public, parochial, and local taxes, duties, and rates of every kind."

By s. 634 of the Merchant Shipping Act, 1894, the "general lighthouse authorities" are the Trinity House, the Commissioners

(a) (1856), 6 E. & B. 852.

(b) *E. v. Monmouthshire Canal Co.* (1835), 3 A. & E. 619; *R. v. Barnby Dun* (1835), 2 A. & E. 551.

of Northern Lighthouses, and the Commissioners of Irish Lights, and that section reproduces in almost identical terms s. 389 of the Merchant Shipping Act, 1854. In *Mersey Docks and Harbour Board v. Llanellian* (c), it was held by the Queen's Bench Division that the exemption created by s. 430 of the Merchant Shipping Act, 1854, did not extend to lighthouses under the control of a local authority. The case was taken to the Court of Appeal, but the decision of the Queen's Bench Division on this point was not questioned (d); and it is clear that it applies to the exemption conferred by s. 731 of the Merchant Shipping Act, 1894.

County lunatic asylums formerly partially exempt.—

Although the partial exemption, which was formerly extended to county lunatic asylums, is now repealed, it is thought convenient to refer to the statutes, because the decisions thereon may be of use in dealing with other statutory exemptions given in similar words.

By s. 35 of the Lunatic Asylums Act, 1853 (16 & 17 Vict. c. 97)—

“No lands or buildings already or to be hereafter purchased or acquired, under the provisions of any former Act, or of this Act, for the purposes of any asylum (with or without any additional building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates, at a higher value or more improved rent, than the value or rent at which the same were assessed at the time of such purchase or acquisition.”

The Lunacy Acts Amendment Act, 1889 (52 & 53 Vict. c. 41), by ss. 68, 94, repealed the exemption given by this section, but was itself repealed by, and (as to the rating provisions) re-enacted in the Lunacy Act, 1890 (53 & 54 Vict. c. 5), which, by s. 263, enacted that—

“Lands and buildings already or to be hereafter purchased or acquired for the purposes of any asylum, and any additional building erected or to be erected thereon, shall, while used for those purposes, be assessed to county, parochial, district and other rates made after the commencement of this Act on the same basis and to the same extent as other lands and buildings in the same parish, township, or district.”

Decisions on the repealed statute.—It was held that a house appropriated by the visitors to the use of the chaplain of an

(c) (1884), 14 Q. B. D. 770; 54 L. J. Q. B. 49; 51 L. T. 62; 52 L. T. 118; 33 W. R. 97; 48 J. P. 391; 49 J. P. 164. The question whether lighthouses are exempt from rating as being occupied “for public purposes,” is considered in Chapter XII., *infra*, p. 137. As to the rating of tolls received by the occupier of a lighthouse, see Chapter XVI., *infra*.

(d) Nor has that decision been affected by the decision of the House of Lords in *London County Council v. Erith and West Ham*, [1893] A. C. 562, *infra*, p. 137, overruling the decision of the Court of Appeal in *Mersey Docks and Harbour Board v. Llanellian*, on another point.

asylum was not used for the purposes of the asylum within the meaning of s. 35 of the Lunatic Asylums Act, 1853, as the chaplain, though required by the visitors, was not required by the statute to be resident; but that a house appropriated to the medical superintendent (together with a garden and such accommodation as was reasonably necessary) was within the exemption, as the superintendent was required by s. 55 to be resident in the asylum; and the fact that the house was a separate building was held to make no difference (*e*). This decision was supported by a later case (*f*), in which it was held that a medical superintendent's house was a part of the asylum, and so within the exemption from inhabited house duty created by 48 Geo. 3, c. 55, Sch. B.

A county lunatic asylum was held not to have lost the exemption, although many pauper lunatics not belonging to the county were confined in it, and some patients not paupers, from both of which classes considerable profits were made. And the exemption was held to extend to land cultivated as farms and gardens by the lunatics assisted by skilled labourers, the produce beyond that consumed by the inmates of the asylum being sold, and a profit realised—if the primary object were not profit but the healthful employment of the lunatics (*g*).

In a case in which exemption from income tax was claimed, it was held that a county asylum was not occupied by the Crown, or for the purposes of the Crown (*h*). This decision applies to questions of exemption from poor rate (*i*).

Burial grounds partially exempt.—By s. 15 of the Burial Act, 1855 (18 & 19 Vict. c. 128)—

“No land already or to be hereafter purchased or acquired, under the provisions of any of the Acts hereinbefore recited (*k*), for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.”

The words in this section creating the exemption are almost identical with those of s. 35 of the Lunatic Asylums Act, 1853, now repealed. It seems, therefore, that the cases above cited as to the exemption of lunatic asylums, may throw some light on the Act relating to burial grounds. The question how burial grounds belonging to cemetery companies, which do not come

(*e*) *Congreve v. Overseers of Upton* (1864), 33 L. J. M. C. 83.

(*f*) *Jepson v. Gribble* (1876), 1 Ex. D. 151.

(*g*) *R. v. Overseers of Fulbourne* (1865), 34 L. J. M. C. 106.

(*h*) *Bray v. Lancashire J.I.* (1889), 22 Q. B. D. 484.

(*i*) See *Coomber v. Berkshire J.I.* (1883), 9 App. Cas. 61, *supra*, p. 93, note (*r*).

(*k*) The recited Acts are 15 & 16 Vict. c. 85, 16 & 17 Vict. 134, and 17 & 18 Vict. c. 87, all of which relate to “the laws concerning the burial of the dead.”

within the exemption, are to be valued will be considered hereafter (*l*).

Municipal corporations formerly exempt.—At the present day it is clear that municipal corporations (and similar bodies) are rateable in respect of their property to the same extent and on the same principles as private individuals ; but this was not always the case.

The Municipal Corporations Act, 1835 (*m*), directed that all rents and profits of the corporation should be carried to the borough fund, and that the surplus of that fund (after providing for expenses incurred under the Act) should be applied “for the public benefit of the inhabitants and the improvement of the borough.” In 1839 it was decided (*n*) that the effect of this enactment was to exempt the corporation from rateability, because the corporate funds were all devoted to “public purposes” ; and in 1840 it was held (*o*) that the same result followed even when the corporate property was situated outside the borough, though the effect of the exemption in that case was to relieve the parishes in the borough at the expense of the parish in which the corporate property lay. To remedy this, the statute 4 & 5 Vict. c. 48, was passed in 1841, enacting that municipal corporations should be rated for their lands as if such lands were not corporate property, but subject to a proviso, that where the property lay in a parish within the borough, and the poor in the borough were relieved by one entire poor rate, “the exemption of such property shall continue as if this Act had not passed” (*p*). Now this exemption rested on the theory that property devoted to “public purposes” was not rateable ; but this theory was swept away in 1865 by the House of Lords in *Jones v. Mersey Docks* (*q*). Consequently the exemption of corporate property would have disappeared if the Act 4 & 5 Vict. c. 48, had not been passed ; but in 1868 it was decided (*r*) that the effect of the proviso (above quoted) was to declare that corporate property in the cases therein specified should be exempt from rating. To meet this decision it was enacted by the Divided Parishes and Poor Law Amendment Act, 1876 (*s*), that “so much of the Act 4 & 5 Vict. c. 48, as exempts the property of municipal corporations from being rated to the relief of the poor in the cases therein mentioned,” should be repealed. And the whole of the Act 4 & 5 Vict. c. 48, is repealed by (and not

(*l*) *Vide infra*, Chapter XXI.

(*m*) 5 & 6 Will. 4, c. 76, s. 92.

(*n*) See *R. v. Mayor, etc., of Liverpool* (1839), 9 A. & E. 435. See further, as to the exemption of property held for “public purposes,” p. 130, *infra*.

(*o*) *R. v. Erminster* (1840), 12 A. & E. 2.

(*p*) *Cf. R. v. Beverley* (1837), 6 A. & E. 645, cited *infra*, p. 130.

(*q*) (1865), 11 H. L. Cas. 443, *supra*, pp. 89—92.

(*r*) *R. v. Mayor, etc., of Oldham* (1868), L. R. 3 Q. B. 474 ; 37 L. J. M. C. 169.

(*s*) 39 & 40 Vict. c. 61, s. 30.

reproduced in) the Municipal Corporations Act, 1882 (*t*), which codified the law relating to municipal corporations.

Property held by municipal corporations in the service of the Crown comes within the exemption of Crown property (*u*).

Land on Thames Embankment.—By a local Act (7 Geo. 3, c. xxxvii.) provision was made for embanking part of the north side of the Thames (near where Blackfriars Bridge now stands), and by s. 51 the land so embanked was to vest in the owners of adjoining land “free from all taxes and assessments whatsoever.” It was held that the exemption extended to land tax (*x*), to paving rates (*y*), and to poor rates (*z*), although in each case the tax (or rate) was made under a *later* general or local Act, which imposed a liability in general terms sufficiently wide to include the land in question, but that it did not extend to the subsequently created house and window duties under 38 Geo. 3, c. 40 (*a*). It has been held that the exemption does not extend to the consolidated rate made by the Commissioners of Sewers of the City of London, under ss. 168, 169 of the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), or by the Common Council as the successors of such commissioners, on the ground that the Act of George 3 applied only to taxes and assessments then in existence (and possibly to substituted taxes), but not to a substantially new rate, subsequently created (*b*).

Rooms used for elections.—By s. 6 of the Ballot Act, 1872 (*c*), which applies in the first instance to *parliamentary* elections, the returning officer at a *parliamentary* election may use, free of charge, any room in a school receiving a parliamentary grant, and any room maintained out of any local rate; and “the use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.” It will be noticed that this section includes two distinct enactments, relating to (1) the use of schools and other public rooms, (2) the exemption from rates. This makes it difficult to say whether, in applying the Act to municipal elections, the exclusion of the application of the first enactment involves the exclusion of the second enactment. It is probable that the marginal note to s. 6 of the Ballot Act, 1872 (which ignores the second enactment), has caused the draftsmen of the later Acts to overlook it. For the present purpose, it may be sufficient to refer to the different Acts. For municipal elections see the Municipal Corporations Act, 1882,

(*t*) 45 & 46 Vict. c. 50.

(*u*) *Vide supra*, pp. 90, 93—95.

(*x*) *Williams v. Pritchard* (1790), 4 T. R. 2.

(*y*) *Eddington v. Borman* (1790), 4 T. R. 4.

(*z*) *R. v. London Gas Light and Coke Co.* (1828), 8 B. & C. 54.

(*a*) *Perchard v. Heywood* (1800), 8 T. R. 468.

(*b*) *Sion College v. Mayor, etc., of London*, [1901] 1 Q. B. 617.

(*c*) 35 & 36 Vict. c. 33.

s. 58 [1], and Sch. III., Part III., r. 1 ; and compare s. 20 of the Ballot Act, 1872, which is repealed by the Act of 1882. For county council elections see the Local Government Act, 1888, s. 75 (16) (*g*), which applies the whole of s. 6 of the Ballot Act, 1872. For elections of guardians, of the councillors of rural and urban districts (other than boroughs), and of parish councillors, see s. 48 (3) of the Local Government Act, 1894. And s. 31 of the Local Government Act, 1894, which also applies s. 6 of the Ballot Act, 1872, applies the same provisions to elections of metropolitan vestries, and these provisions now apply to metropolitan borough councillors under s. 2 (5) of the London Government Act, 1899.

Power to excuse paupers from payment of rates.—It may seem a somewhat circuitous proceeding to make a rate upon the poor for the relief of the poor ; but poverty of itself does not exempt an occupier (*d*) of land or a house from liability to the poor rate. And if a distress warrant is applied for, in order to recover a rate from an occupier who pleads inability to pay, the magistrates are bound to issue the warrant, and have no power even to order that there shall be delay in the execution of it (*e*). But by s. 11 of the Poor Relief Act, 1814 (*f*), upon application made to two justices by any person rated, and proof of his inability to pay the rate, they may (with the consent of the overseers or other parish officers) order that such person shall be excused from the payment of the rate. It is to be noticed that when an order has been made under this section the landlord does not become liable instead of the occupier (*g*).

(*d*) As to the rating of the owner, instead of the occupier, of houses of small value or let for short terms, *vide supra*, pp. 60—65.

(*e*) See *R. v. Handsley* (1881), 7 Q. B. D. 398.

(*f*) 54 Geo. 3. c. 170, s. 11, set out in Appendix II. Compare the Public Health Act, 1875, s. 225, as to the general district rate.

(*g*) *Cf. R. v. Hull Dock Co.* (1824), 3 B. & C. 516.

CHAPTER XII.

BENEFICIAL OCCUPATION.

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Beneficial occupation: the meaning of the phrase.—In order to create liability to poor rate there must be an occupier. It was at one time held that it must also be shown that his occupation is "beneficial," and that word was (in many cases) used as equivalent to "profitable." This doctrine was very much shaken by the decision of the House of Lords in 1865, in the well-known *Mersey Docks Case* (a), but even in that case (b) there are to be found some traces of the fallacy that pecuniary profit is essential to the existence of liability. This fallacy has now been finally swept away by the decisions of the Court of Appeal in *R. v. School Board for London* (c), and *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (d), and by the decision of the House of Lords in the *London County Council's Sewers*

(a) *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443.

(b) See the judgments of BLACKBURN, J. (11 H. L. Cas., at p. 478), of Lord CRANWORTH (*ibid.*, p. 507), and of Lord CHELMSFORD (*ibid.*, p. 521).

(c) (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235.

(d) (1889), 24 Q. B. D. 197; Ryde's Rat. App. (1886—1890), 314.

Cases (e). These cases show clearly that if by “beneficial occupation” we mean an occupation which is profitable to the occupier, then “beneficial occupation” is not necessary to create liability; but “beneficial occupation” is necessary, if by that term we mean an occupation which is of value to the occupier, and for which a tenant will give a rent which is greater than the necessary outgoings for the maintenance of the property (*f*).

But although it is now recognised that rateability is consistent with a complete absence of profit to the occupier, in some cases decided since the *Mersey Docks Case* it appears to have been considered that where there is a profit accruing to the occupier, that profit is necessarily a measure of the rateable value (*g*). It appears to the writer very difficult (if not impossible) to reconcile these decisions with the recent decisions of the Court of Appeal and the House of Lords (*h*). Consequently it may be useful to consider the history of the law on the subject.

In the case of private property held for the purpose of making a profit, it has never been doubted that, if a profit is made which is entirely absorbed in paying an agreed rent to the landlord, the tenant is rateable. Thus in *R. v. Parrot* (*i*), the lessees of a coal mine were bound to pay a rent which left *them* no profit, although profits were actually made by working the mine: it was held that they were rateable.

Liability under the Statute of Elizabeth.—The question of amount—at what sum a person is to be rated—now depends upon the definition of “net annual value” in s. 1 of the Parochial Assessments Act, 1836 (*k*); the question of liability—whether a person is or is not rateable—depends upon the first section of the Statute of Elizabeth (*l*). That Act (in effect) imposes the liability upon the occupier (not the owner) of lands, houses, etc. Amongst the houses named in the statute, dwelling-houses must be (and always have been) included. Now, a house used only as a dwelling-house (and not as a shop or for any purpose of business or trade) must necessarily be a source of loss to the occupier, though

(*e*) *London County Council v. Erith and West Ham*, [1893] A. C. 562; *Ryde's Rat. App.* (1891—1893), 413.

(*f*) See the judgment of Lord HERSCHELL in *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 585, *infra*, p. 142; and the opinion of BLACKBURN, J., and the judgment of Lord WESTBURY, in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at pp. 461, 501, *infra*, pp. 133, 134.

(*g*) See, for example, *Mayor, etc., of Worcester v. Droitwich Union* (1876), 2 Ex. D. 49, *infra*, p. 293; *Merthyr Tydfil Local Board v. Merthyr Tydfil Union*, [1891] 1 Q. B. 186, *infra*, p. 303.

(*h*) *Vide infra*, p. 299.

(*i*) (1794), 5 T. R. 593. See also p. 173, *infra*.

(*k*) 6 & 7 Will. 4, c. 96: the Valuation (Metropolis) Act, 1869 (32 & 33 Vict. c. 67), s. 4, substitutes a new definition of “rateable value” for parishes within the “metropolis” as defined by that Act; for the present purpose the difference between the two definitions is immaterial. Both Acts are set out in Appendix II.

(*l*) 43 Eliz. c. 2, set out in Appendix II. Special enactments relating to rights of sporting, advertisement hoardings, etc., may for the present be ignored.

possibly a source of profit to the owner. But if the occupier, and not the owner of such a house is to be rated, it is obvious that the rate is not a tax on income; for, if it were, the person who receives (not the person who pays) the rent would be rated. The root of the fallacy running through some of the earlier cases will be found in the substitution of "the profits of lands, and houses," for the words "occupier of lands, houses," etc., in the Statute of Elizabeth: and if this substitution be made, erroneous conclusions necessarily follow and anomalies result therefrom. Charitable institutions, such as hospitals, were at one time held not rateable because there was no occupier of them who could be rated (*m*): on the ground that the poor who were patients, though occupiers, could not be rated: that the servants were not occupiers at all; and that the trustees either were not occupiers *de facto*, or had "a bare naked trust, not coupled with any interest" (*n*). The owner and occupier of a charitable institution was held not rateable if he made no profit by it (*o*); yet if some income was received by the occupier, he was rateable, although that income might be swallowed up in the expenses of the institution (*p*). The trustees of a charity of a strictly private nature, and not for the benefit of the public at large, were held to be rateable (*q*). The persons receiving the benefits of a charity, if they were "occupiers" of land or houses, and not mere lodgers or servants, were rateable (*r*). Where lands vested in trustees for charitable purposes are let, the tenant is (and always was) rateable (*s*). Occupiers of chapels (*t*) were held rateable if they received pew rents (*u*), but not otherwise (*x*). The London Missionary Society were held not rateable for offices in the city of London, "devoted entirely to charitable and religious purposes" (*y*). But the Baptist Missionary Society were held

(*m*) See *R. v. St. Luke's* (1760), 2 Burr. 1053; *R. v. St. Bartholomew* (1769), 4 Burr. 2435. A hospital has, in modern times, been decided by the House of Lords to be rateable: *Governors of St. Thomas' Hospital v. Stratton* (1875), L. R. 7 H. L. 477.

(*n*) *Per* Lord KENYON, C.J.: *R. v. Salter's Load Sluice* (1792), 4 T. R. 730, at p. 732; and see the comment on this case in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at pp. 465, 466, 502.

(*o*) *R. v. Waldo* (1783), Cald. 358; 1 Const. 166; *R. v. St. George's, Southwark (Bethlehem and Bridewell Hospital Cases)* (1847), 10 Q. B. 852.

(*p*) *R. v. St. Giles', York* (1832), 3 B. & Ad. 573; *R. v. Sterry* (1840), 12 A. & E. 84; *R. v. Temple* (1853), 2 E. & B. 160. But see also *R. v. St. George's, Southwark, supra*, where hospitals were held not rateable although small payments were received from some of the patients.

(*q*) *R. v. Stapleton* (1863), 33 L. J. M. C. 17.

(*r*) See *R. v. Catt* (1795), 6 T. R. 332, *supra*, pp. 21, 22; *R. v. Munday* (1801), 1 East, 584, *supra*, p. 19; *R. v. Green* (1829), 9 B. & C. 203, *supra*, p. 19; and *cf. R. v. Field* (1794), 5 T. R. 587, *supra*, pp. 21, 22. These cases are still good law.

(*s*) *R. v. Ellis* (1842), 12 L. J. M. C. 20. This is still good law.

(*t*) Chapels, if duly certified, are now specially exempt by statute: see Chapter IX., *supra*. The college chapels at Oxford were held rateable in the *Oxford Rate Case* (1857), 8 E. & B. 184, at p. 211. See also p. 179, *infra*.

(*u*) *R. v. Agar* (1811), 14 East, 256; *Robson v. Hyde* (1783), Cald. 310; 1 Const. 164. It made no difference if the pew rents were all expended in paying the preachers.

(*x*) *R. v. Southwark* (1726), 2 Stra. 745; *Anonymous Case* (1727), 1 Const. 128; *R. v. Woodward* (1792), 5 T. R. 79.

(*y*) *R. v. Wilson* (1840), 12 A. & E. 94.

rateable, because they received contributions from other societies (who occasionally used parts of the premises), and sold books, although the contributions were not more than the expenses incurred, and the books were sold for less than their cost (z). All the cases referred to in the preceding paragraph must now be reviewed in the light of the decision of the House of Lords in *London County Council v. Erith and West Ham (a)*, which proves conclusively that charitable and religious institutions, as such, cannot claim exemption, even though no profit be made by them.

Property occupied for public purposes.—The theory (exploded since the *Mersey Docks Case (b)*) that property occupied for “public purposes” is not rateable, was evolved out of the theory that the receipt of a profit is essential to the existence of rateability. Where property is occupied by persons or corporations, who are in a sense trustees for the public, if profit arises out of the occupation the benefit does not accrue to the trustees personally; and if all the profit be specifically appropriated to the purposes for which the occupiers are put into possession of the property, as long as the receipt of profit is regarded as the foundation of rateability, it is not easy to see how such property can logically be made rateable. Three classes of cases may be noticed: (1) where no income whatever is derived from the property occupied; (2) where there is an income, but the whole of it when received is appropriated to the objects for which the occupiers are put in possession; (3) where there is such an income, so appropriated, but where the effect of rating the occupiers would be to relieve the other ratepayers in one way and to impose an exactly corresponding burden upon them in another. For the present purpose it is sufficient to notice illustrations of these three classes, taking them in inverted order.

Cases in which exemption becomes unimportant.—In *R. v. Beverley (c)*, commissioners for lighting the parish of Beverley manufactured and sold gas, the proceeds being applicable only to the purposes of their special Act. It was held that the commissioners were not rateable, and LITTLEDALE, J., said: “If the commissioners are rated, they must increase their rate on the town; it is as broad as it is long.” Similar reasons for exemption were urged in some of the cases relating to the property of municipal corporations (d). At the present day it is hardly possible that the case can arise in fact. Every parish (probably without exception) is part of some larger area, such as a borough, union, or county; some part of local taxation is spread equally over each of the

(z) *R. v. Baptist Missionary Society* (1849), 10 Q. B. 884.

(a) [1893] A. C. 562; Ryde's Rat. App. (1891–1893), 413, *infra*, pp. 141, 142.

(b) *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443; *infra*, p. 133.

(c) (1837), 6 A. & E. 645.

(d) See Chapter XI., *supra*, p. 124.

larger areas, as other parts are spread over the smaller, and it is no longer "as broad as it is long." If a county industrial school be rated, the ratepayers of the whole county contribute to the rates charged thereon, and by their contribution *pro tanto* relieve the ratepayers of the particular parish in which the school is situated. If a parochial school is rated, the ratepayers of the particular parish provide the rates paid thereon, including the proportion of the county rate charged in respect of the school, thereby relieving (though very slightly) the ratepayers of the county at large (*e*). The first step towards the discovery of this fact was made in *Governors of Poor of Bristol v. Wait* (*f*), in which the appellants were held rateable for a workhouse situated in a parish outside the limits of the city for which the workhouse was provided. And in *R. v. Wallingford* (*g*), the guardians of a union were held rateable for a workhouse situated in one parish of the union. So, too, in *R. v. Justices of Hull* (*h*), the corporation of a borough were held rateable for a stoneyard situated in the borough, but in a parish which was partly outside the borough.

Cases in which profits are made, but appropriated to "public purposes."—The first case in which the term "public purposes" was used appears to be *R. v. Salter's Loud Sluice* (*i*). In that case commissioners for improving the navigation of a river were entitled to certain tolls, which were to be applied to the purposes of the special Act, "and to no other use or purpose whatsoever." It was held by Lord KENYON, C.J., that the trustees were not rateable; and he said—"There is property the subject of a rate; but there is no occupier of it. The trustees have a bare naked trust, not coupled with any interest. If any interest resulted, either to the commissioners or to the owners of the adjoining land, after the public purposes of the Act were answered, these tolls might have been rated." In this judgment it is clear that Lord KENYON confuses two reasons: (1) that there was no occupier, and (2) that there was no beneficial occupier because no profit was made. If the first reason were true in fact, it would be good in law, and would be so held at the present day (*k*). But the reference to the appropriation of the profits to "public purposes" was the foundation of a series of decisions that appropriation to

(*e*) Compare the judgment of STEPHEN, J., in *West Bromwich School Board v. Overseers of West Bromwich* (1884), 13 Q. B. D. 929, at p. 937.

(*f*) (1836), 5 A. & E. 1.

(*g*) (1839), 10 A. & E. 259.

(*h*) (1854), 4 E. & B. 29; *S. C. sub nom. R. v. Cooper*, 23 L. J. M. C. 183. This case should be compared with *R. v. Exminster* (1840), 12 A. & E. 2: *vide supra*, p. 124.

(*i*) (1792), 4 T. R. 730; but see also *Lord Antherst v. Lord Somers* (1788), 2 T. R. 372, at p. 375, where it was said "neither the possessions of the Crown, nor of the public, are liable to be rated."

(*k*) See the cases as to the rating of canals and navigable rivers in Chapter XVII., and the *Brockwell Park Case*, *Lambeth Overseers v. London County Council*, [1897] A. C. 625, *supra*, p. 17.

“public purposes” was good ground for exemption (*l*). This principle was subsequently limited by the rule that, to create exemption, the profit must be appropriated to the “public purposes” of the whole realm, and not merely to those of a particular parish or county (*n*). But the House of Lords in *Jones v. Mersey Docks* (*n*) held that the exemption extended only to property held by the Crown, or for those “public purposes” of the government of the country which are (in theory) administered by the Crown.

Cases in which no profits are made.—In *R. v. Sculcoates* (*o*), certain drainage commissioners had bought land and buildings for the purpose of making a drain, for the benefit of land in other parishes only. The land taken, about six acres in extent, was covered with water, and no profit or income of any kind was derived from it in the parish for which the rate was made. It was held that the commissioners were not rateable, because they derived no pecuniary benefit for themselves or others (*p*). But in *Governors of Poor of Bristol v. Wait* (*q*), the confusion between a profitable and a valuable occupation involved in the use of the term “beneficial occupation” appears for the first time to have been realised, and the governors of the poor of Bristol were held rateable for their workhouse in a foreign parish, though the workhouse was a losing concern; and Lord DENMAN, C.J., said (*r*): “If by ‘beneficial’ be meant profitable, or anything like it, the expression is obviously fallacious.” In *R. v. Wallingford Union* (*s*), the guardians were held rateable for a workhouse in their own union, and Lord DENMAN, C.J., said: “The occupation is not beneficial to the guardians individually; but the most advantageous mode of relieving their poor is an advantage to that body” (*t*).

The relation of profits to rateable value under the Mersey Docks Case.—In *Jones v. Mersey Docks* (*u*), the Dock Board received payments from the ships that used the docks greatly

(*l*) See, for example, *R. v. Liverpool Overseers* (1827), 7 B. & C. 61; *R. v. River Weaver Navigation* (1827), 7 B. & C. 70 n.; *R. v. Mayor, etc., of Liverpool* (1839), 9 A. & E. 435, *supra*, p. 124. The authority of these cases was much shaken in *Birkenhead Dock Trustees v. Birkenhead Overseers* (1852), 2 E. & B. 148.

(*m*) *R. v. Badcock* (1845), 6 Q. B. 787 (the Taunton Market Case); *R. v. Harrogate Commissioners* (1850), 15 Q. B. 1012; *Tyne Improvement Commissioners v. Chirton* (1859), 1 E. & E. 516. See also *R. v. Stupleton* (1863), 33 L. J. M. C. 17, *supra*, p. 129.

(*n*) (1865), 11 H. L. Cas. 443, *supra*, pp. 89—91.

(*o*) (1810), 12 East, 40.

(*p*) In *R. v. Blackfriars Bridge Co.* (1839), 9 A. & E. 828, the tolls taken were absorbed in repairs and paying interest on mortgage debts; it was held that the company were rateable.

(*q*) (1836), 5 A. & E. 1.

(*r*) 5 A. & E., at p. 8.

(*s*) (1839), 10 A. & E. 259; see p. 269.

(*t*) *Cf. R. v. Hull Justices* (1854), 4 E. & B. 29; *S. C. sub nom. R. v. Cooper*, 23 L. J. M. C. 183.

(*u*) (1865), 11 H. L. Cas. 443.

in excess of what was necessary to maintain them. The income was devoted to the purposes of the special Acts, and the Dock Board were nevertheless held rateable. The question remains, whether rateability depended on the existence of such an income. Apparently BLACKBURN, J. (who delivered the opinion of the majority of the judges, which was adopted by the House of Lords), would have answered in the affirmative. For he said (*x*) :

“There can be no valid rate unless the occupation be such as to be of value; and if the words ‘beneficial occupation’ are to be understood as merely signifying that the occupation is of value . . . it is clear that a beneficial occupation is the foundation of the rate (*y*); but it is equally clear that, if the phrase is to be understood in this limited sense, the trustees have a beneficial occupation, for they actually occupy land as docks, and in virtue of that occupation receive payments from the shipping using the docks; at present greatly in excess of what is necessary to maintain the docks. Hereafter the charges on shipping may be reduced so as greatly to diminish the revenue derived from this occupation; possibly at some future time to render it no greater than the sum requisite to maintain the docks; but, whilst the dues on shipping are maintained at their present rate, it is clear that the hypothetical tenant would give for the occupancy of the docks, as at present enjoyed by the trustees, a rent greatly in excess of what would be necessary to maintain the docks in a state to command that rent.”

And BLACKBURN, J., further said (*z*) :

“The rate is to be withheld [*qu. upheld*], not in respect of the value of the benefit conferred on the public, or on that portion of it which uses the dock, but is to be imposed on the occupiers of the docks in respect of the value to them derived from the payments taken for that use.”

In the latter, if not in the former, of these passages, the “value” of the docks appears to be regarded as depending entirely on the income derived from them; and it is somewhat remarkable that BLACKBURN, J., takes no notice of the fact that this view is in conflict with two cases cited by him (apparently with approval), viz.: *Governors of Poor of Bristol v. Wait* (*a*), and *R. v. Wallingford Union* (*b*). In both these cases guardians were held rateable for a workhouse, from which no income was derived. The judgment given by Lord WESTBURY, L.C., in *Jones v. Mersey Docks*, seems clearly to make rateable value independent of the existence of an income from the property; he said (*c*) :

“Having regard to the Parochial Assessment Act (6 & 7 Will. 4, c. 96), it may be said that ‘occupation’ to be rateable must be of property yielding, or capable of yielding, a net annual value, that is to say, a clear rent over and above the probable average annual cost of the repairs, insurance, and

(*x*) 11 H. L. Cas., at p. 462.

(*y*) It is remarkable that in *London County Council v. Erith and West Ham*, [1893] A. C., at p. 485, after citing the earlier part of the passage here quoted, Lord HERSCHELL, L.C., stopped short, and ignored the following sentences, which seem to make rateability depend on the receipt of shipping dues.

(*z*) 11 H. L. Cas., at p. 478.

(*a*) (1836), 5 A. & E. 1, *supra*, p. 132.

(*b*) (1839), 10 A. & E. 259, *supra*, p. 132.

(*c*) 11 H. L. Cas. 443, at p. 501.

other expenses, if any, necessary to maintain the property in a state to command such rent. It is in this sense that I understand the words 'beneficial occupation,' wherever it is said that to support a rate the occupation must be a beneficial one. For, on principle, it is by no means necessary that the occupation should be beneficial to the occupiers. It is sufficient if the property be capable of yielding a clear rent over and above the necessary outgoings."

And Lord CRANWORTH said (*d*) :

"If by *beneficial* occupation is meant any occupation of something valuable, something in its own nature *beneficial* to some one, I think it is fair to consider that word as impliedly included in the statute. It was not meant to impose the duty of contributing to the relief of the poor on any one merely because he might be the occupier of a barren rock (*e*) neither yielding nor capable of yielding any profit from its occupation."

Lord CHELMSFORD, in *Jones v. Mersey Docks*, uses words which are ambiguous : he says (*f*) :

"*Prima facie* a liability to the rate would seem to attach upon any occupation from which benefit is derived. . . . By the Act [43 Eliz. c. 2], the taxation is to be on every occupier 'according to the ability of the parish': the productive occupation of the several occupiers within the parish making up the aggregate ability. If an occupier derives no benefit of any description from his occupation, it forms no part of the general ability of the parish. . . . Under the words of 43 Eliz. c. 2, every occupier of a tenement yielding profit is within the rating clause of the statute, although the tenement be a public work for the general good of the realm, and the profit be directed to be applied exclusively to its maintenance."

Some, though not all (*g*), of the judgments cited above seem to regard the rateable value as consisting of, or included in, the income derived from (or the produce yielded by) the hereditament occupied. The fact that the subject-matters to be considered were docks yielding an income no doubt affected the form of the judgments; and great difficulty was subsequently experienced in applying the decision to property from which profit was not (*h*), and indeed could not be (*i*) derived. Great part of the difficulty disappears if it be remembered that the test of rateability is not whether the property will produce profit, but whether it will produce rent.

Rating of sewers and sewage works since the Mersey Docks Case.—Shortly after the decision of *Jones v. Mersey Docks* (*k*), an

(*d*) 11 H. L. Cas., at p. 507.

(*e*) See the remarks of BOWEN, J. J., with reference to this phrase in *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235, at p. 239. The use of it was, perhaps, the origin of the phrase "struck with sterility": *vide infra*, p. 139.

(*f*) 11 H. L. Cas., at pp. 511, 519, 521.

(*g*) The judgment of Lord WESTBURY is certainly an exception.

(*h*) As in the case of schools: see *West Bromwich School Board v. Overseers of West Bromwich* (1884), 13 Q. B. D. 929, *infra*, p. 138: *R. v. School Board for London* (1886), 17 Q. B. D. 735: Ryde's Rat. App. (1886—1890), 235, *infra*, p. 154.

(*i*) As in the case of sewage works: *London County Council v. Erith and West Ham*, [1893] A. C. 562, *infra*, p. 141.

(*k*) (1865), 11 H. L. Cas. 443.

attempt was made to rate the Metropolitan Board of Works for certain main sewers, and a pumping station, engine house, a wharf, and other property (including a dwelling-house for the manager) in the parish of Greenwich (*l*). The sewers (except at the pumping stations) were under the public highways, or under land in which the Board had no property. The court held the sewers not rateable, but the rest of the property rateable. LUSH, J., said (*m*) :

“The sewers are not rateable, on the short ground that they are not at present the subject of a beneficial occupation. No payment is made to the Board for the use of them; the rates which they are empowered to levy are for the expense of construction and maintenance, and nothing more. Their occupation yields no profit to the Board, as occupiers, either actual or potential (*n*). As regards the other property . . . we are of opinion that the rate is properly imposed. . . . The Board must have rented such premises if they had not become the owners of them (*o*), and a tenant might easily be found to take them if the Board were able and willing to let them. A distinction was attempted to be drawn in favour of the pumping apparatus as being a necessary adjunct to the sewers, and it was contended that as the sewers are not rateable, this adjunct must be exempted as being part of a non-rateable subject. But we cannot accede to this view. The machinery stands on land which is valuable for occupation, and which would, undoubtedly, be rateable in the hands of any other occupier, and its rateable quality cannot be affected by the particular use to which it is applied by the Board” (*p*).

The distinction here drawn between sewers under the highway, and a pumping station has been recognised, and, perhaps, confirmed by the House of Lords in the *London Sewers Cases, London County Council v. Erith and West Ham* (*q*). But it is submitted that the passage quoted above is open to serious objection. In order to test the rateability of sewers and pumping stations, it propounds two alternative questions: (1) Does the occupier make any profit out of his occupation? (2) Would he give a rent for the hereditament? If one or other of these questions be the test of rateability, then it is submitted that one and the same question should be asked with reference both to sewers and to pumping stations; but the judgment asks the first question with reference to sewers, and shifts to the second question in dealing with the pumping station. It is plain that either question must be answered in the same way with reference to both subject-matters; the first question must be answered in the negative, the second in the affirmative, with reference to both. It will be seen that, in subsequent cases, the second and not the first question has been made the test of rateability.

(*l*) See *R. v. Metropolitan Board of Works* (1868), L. R. 4 Q. B. 15.

(*m*) L. R. 4 Q. B., at p. 26.

(*n*) All these statements were equally true of the pumping station and the other property.

(*o*) This first statement was equally applicable to the sewers.

(*p*) This sentence is not easily reconcilable with the judgment of the same judge in *Metropolitan Board of Works v. West Ham*, *infra*, p. 136.

(*q*) [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413, *infra*, p. 142.

An attempt was made two years later to review the decision in *R. v. Metropolitan Board of Works* (r). In *Metropolitan Board of Works v. West Ham* (s), a question was raised as to a similar pumping station, and as to sewers carried in an embankment raised above the natural surface of the ground. The pumping station was admittedly covered by the previous decision (t), but it was contended, on the authority of the same case, that sewers which occupied land previously rated must continue to be rateable; the Queen's Bench held that this made no difference. LUSH, J., said (u) :

"If in its present condition, it [the sewer] can produce no profit to the Metropolitan Board, it cannot be supposed that any person would take it as a tenant and pay rent for it (x). The rateable quality of land is not to be determined by what it once was, or by what it may hereafter become. If a piece of fertile land were to be covered by the ashes of a volcano, or by an inundation, it would not be rateable so long as it continued in that condition. On the other hand, in the case of a barren rock (y), so long as it remains a barren rock it is not rateable, but the moment it is worked as a quarry it becomes rateable. The rateable quality of land must be determined by what it was at the time the rate is made."

In order to keep the cases in chronological order—which is also the logical order—it will be convenient to defer for the present the consideration of the later cases relating to sewers and sewage works (z).

The Putney Bridge Case.—In *Hare v. Overseers of Putney* (a), an attempt was made to rate the Metropolitan Board of Works for Putney Bridge, which had been bought by them under statutory powers from a company, and had been thrown open to the public, free of toll. The Court of Appeal held that the Board were not in occupation at all (b), and, further, that if they were in occupation, the occupation was not beneficial, because no benefit could possibly arise to the occupier from the occupation, the bridge being kept up solely for the benefit of the public.

Assuming the Board of Works to be in occupation, it may be useful to note that the decision that the occupation was not beneficial, was perfectly consistent with the decisions that there

(r) (1868), L. R. 4 Q. B. 15, *supra*, p. 135.

(s) (1870), L. R. 6 Q. B. 193.

(t) As to the measure of value of the pumping station, *vide infra*, pp. 153, 154.

(u) L. R. 6 Q. B., at p. 197.

(x) The possibility that the Board *itself* (if it were not the owner) might become a tenant is here obviously excluded from consideration, but see *R. v. School Board for London* (1886), 17 Q. B. D. 738, *infra*, p. 154.

(y) Compare the judgment of Lord CRANWORTH, in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, at p. 507, *supra*, p. 134.

(z) See *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197; Ryde's Rat. App. (1886—1890), 314, *infra*, p. 140; *London County Council v. Erith and West Ham*, [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413, *infra*, p. 141; *Mayor, etc., of Leicester v. Overseers of Beaumont Leys* (1894), Ryde and Konstam's Rat. App. (1894—1904), 140, *infra*, p. 142; *Ystradgynodur and Pontypriidd Sewerage Board v. Newport Union*, [1901] 1 K. B. 406, *infra*, p. 143.

(a) (1881), 7 Q. B. D. 223.

(b) As to this point, *vide supra*, p. 17.

was a beneficial occupation of public elementary schools (*c*), or of sewage works (*d*). The School Board were under a statutory obligation to educate the children of the metropolis; the London County Council were under a statutory obligation to dispose of the sewage of the metropolis; the occupation of the schools in the one case, and of the sewage works in the other, afforded the means (probably the cheapest and most efficient means) of discharging the statutory obligation, which must be discharged, whatever the cost might be. But the Metropolitan Board of Works were under no obligation to carry the public across the river, and the occupation (if they were in occupation) of the bridge, did not relieve the Board of the necessity of incurring any expenses which, if there had been no bridge, must have been incurred. It is true that the Board were bound to repair the bridge, but this duty was a consequence of the occupation (or of the ownership) of the bridge, and the occupation was not a consequence of any pre-existing or independent duty. In the case of the board schools and of the sewage works, the occupation was the consequence of a pre-existing duty; and the duty to provide schools, or sewage works, did not arise out of the occupation.

Rateability of a lighthouse from which no profits are made.

—In *Mersey Docks v. Llanellian* (*e*), the Dock Board were owners of a lighthouse; the expenses of maintaining it were paid out of dues levied on shipping, and by the special Acts, the dues might not exceed what was necessary to meet the expenses which were to be paid out of those dues. The Court of Appeal held that the lighthouse was not rateable, because nothing could be made of it, and because the hypothetical tenant must be supposed to take subject to the Acts of Parliament, which would prevent him from making a profit, and that the lighthouse was therefore “struck with sterility” (*f*).

As this decision has been now overruled by the House of Lords in *London County Council v. Erith and West Ham* (*g*), it may be useful to note why it was wrong. It is now established (*h*) that the actual occupier must be taken into account as one of the possible hypothetical tenants. The actual occupier, the Mersey Dock Board, did, in fact, occupy the lighthouse without making a profit, and the motive for that occupation was the preservation of

(*c*) *R. v. School Board for London* (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235, *infra*, p. 138.

(*d*) *London County Council v. Erith and West Ham*, [1893] A. C. 564; Ryde's Rat. App. (1891—1893), 413, *infra*, p. 141.

(*e*) 14 Q. B. D. 770. The exemption of lighthouses under the Merchant Shipping Acts is considered in Chapter XI., *supra*, p. 121.

(*f*) As to this phrase, *vide infra*, p. 139.

(*g*) [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413.

(*h*) See *R. v. School Board for London* (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235, *infra*, p. 154.

the shipping entering the port of Liverpool, and not the making of a pecuniary profit out of the dues.

Assuming that no tenant would take the lighthouse in order to make a pecuniary profit, the question remained, whether the Dock Board would themselves take the lighthouse in order to protect the shipping. To this question, which was unnoticed by the Court of Appeal, the facts supplied an answer, since the Dock Board had for many years been tenants of the lighthouse before they purchased it.

Rateability of public elementary schools, since the Mersey Docks Case.—We have already seen that in *Jones v. Mersey Docks* (i) BLACKBURN, J., seemed to suggest that if the income of the docks were destroyed, the rateable value would go with it. Subsequently, in two cases dealing with the rating of waterworks belonging to municipal corporations (k), it had been held that the restrictions imposed upon the corporations by statute with regard to the charges they might make for water, affected the amount of the rateable value; and that if the profit which could be made under the statutory restrictions were reduced to nothing, though the waterworks were rateable, the rateable value was nil. Applying this theory to schools, of which a school board were either freeholders or lessees, it was contended in *West Bromwich School Board v. West Bromwich Overseers* (l), that as the Board were prohibited by statute from making a profit, there was no beneficial occupation, no rateable thing to assess; but the Court of Appeal held that the schools of which the Board were lessees were rateable, because the landlord could find a tenant; and that the schools of which the Board were owners were rateable because the Board had power to let them. And BOWEN, L.J., said (m):

“I will assume that in the hands of the School Board it is not capable of being beneficially occupied; but we must consider whether it is capable of being beneficially occupied in the hands of any other person. If land is by law struck with sterility (n) when in any and everybody's hands, so that no profit can be derived from the occupation of it, it cannot be rated to the relief of the poor. But if the school-house is not used by the School Board for any profitable purpose, it by no means follows that the site of it must be sterile in every other person's hands.”

The decision that a school board is rateable was confirmed in *R. v. School Board for London* (o), though that case dealt mainly

(i) (1865), L. R. 11 H. L. 443, *supra*, p. 133.

(k) *Mayor, etc., of Worcester v. Droitwich Union* (1876), 2 Ex. D. 49; 46 L. J. M. C. 241; *Mayor, etc., of Peterborough v. Stamford Union* (1883), 31 W. R. 949: see Chapter XV., *infra*.

(l) (1884), 13 Q. B. D. 929.

(m) 13 Q. B. D., at pp. 942, 943.

(n) This phrase appears to have been first used by BRETT, L.J., in *Coomber v. Berkshire JJ.* (1882), 10 Q. B. D., at p. 282.

(o) (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235, *infra*, p. 154.

with the question, on what principle is the amount to be ascertained, at which the board is to be rated.

The meaning of the phrase "struck with sterility."—The passage cited in the preceding paragraph helped to bring the phrase "struck with sterility" into common use; but the doctrine laid down has been modified, if not entirely overruled, by *London County Council v. Erith and West Ham (p)*, in which Lord HERSCHELL, L.C., after quoting the passage above cited, said :

"If land is 'struck with sterility in any and everybody's hands,' whether by law or by its inherent condition, so that its occupation is and would be of no value to anyone, I should quite agree that it cannot be rated to the relief of the poor. But I must demur to the view that the question whether profit (by which I understand is meant pecuniary profit) can be derived from the occupation is a criterion which determines whether the premises are rateable, and at what amount they should be assessed; and I do not think that a building in the hands of a school board is incapable of being beneficially occupied by them, and is not so occupied because they are prohibited from deriving a pecuniary profit from its use."

There is no objection to the phrase "struck with sterility" if it be not misapplied. Land dedicated to the public as a highway may rightly be said to be "struck with sterility": as long as the dedication lasts no tenant would give anything for the land, and it has no rateable value. If a tramway be laid in the highway, and power be given to charge for carrying passengers thereon, the highway is no longer completely "struck with sterility," and a tenant will give a rent for the tramway. So, too, if by Act of Parliament a railway company, occupying its line solely for the purpose of making profit, were prohibited from charging more than certain specified rates, "the restrictions which the law has imposed on the profit-earning capacity of the undertaking must be considered" (*q*), and so far as those restrictions diminish the value of the undertaking (*r*), it may rightly be said to be struck with partial sterility.

But a fallacy is involved in the application of the phrase to land which is occupied, not for the sake of making profit out of the occupation, but for the discharge of a public duty. If a public body has to perform a public duty which involves the occupation of land or buildings, it will give a rent for such land or buildings, even though the occupation necessarily involves a pecuniary loss. The land has a value, though it produces no profit. In the case of a sewage farm carried on at a loss, the value of such a farm is

(*p*) [1893] A. C. 562, at p. 591; Ryde's Rat. App. (1891--1893), 413, at p. 426.

(*q*) Per Lord HERSCHELL, L.C., in *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 592; and see the remarks on this passage in *Sculcoates Union v. Hull Docks*, [1895] A. C. 136, at p. 150, *infra*, p. 241.

(*r*) There is a distinction between a diminution of the value of the undertaking and a diminution of the profit which a particular occupier can make: *vide infra*, p. 173.

so great that the owners are content to forego the (comparatively) small amount of profit which might arise from the use of the land for ordinary agricultural purposes (s). The appropriation of the land to a sewage farm having made it more valuable than it was before, it is clearly wrong to contend that it is by that appropriation "struck with sterility."

The Burton Case.—In dealing with the absence of profit, a distinction may be drawn between schools and sewage farms or sewers. A school board may make no profit out of their schools, but it is at least conceivable that some other occupier, using the buildings as they stand, either for schools or for other purposes, could make a profit, and would pay a rent. But it may be contended that in the case of a sewer, and of a sewage farm (as long as it remains a sewage farm), no profit can be made, and no rent would be given, by any occupier other than the public authority who are the owners. Does this fact (if it be proved) make any difference?

The decision in the Court of Appeal in *R. v. School Board for London* (t) showed that the actual occupier must be taken into account as a possible hypothetical tenant, and the rent which that occupier would give must be considered. The logical result of this decision appears to be that, if the actual occupier would give a rent (if he were not the owner), he is rateable, although the thing occupied cannot from its very nature be a source of profit to him, or to any other occupier. And in *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (u), the Court of Appeal held that the corporation were rateable for a sewage farm and pumping station connected therewith, for which they had been rated at substantial sums. The case contained the following finding of fact (x):

"It is impossible to work the sewage farm except at a loss, and the land and pumping station while used as part of the sewage system are incapable of yielding a profit or advantage, except that they enable the appellants to convey the sewage on to the farm, but the appellants would not be able to carry out their statutory duties as to the disposal of sewage at any other place at a smaller expense. If the land and pumping station in question belonged to a private owner he would let, and the appellants would hire them at a yearly rent sufficiently high to support the present rate" (y).

The Court of Appeal held, relying mainly upon this finding

(s) See *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (1889, 24 Q. B. D. 197; Ryde's Rat. App. (1886—1890), 314.

(t) (1886), 17 Q. B. D. 738, *infra*, p. 154.

(u) (1889), 24 Q. B. D. 197; Ryde's Rat. App. (1886—1890), 314.

(x) See 24 Q. B. D., at p. 198.

(y) A very similar finding was included in each of the cases relating to the London County Council's sewers and sewage works, in which the rating authority succeeded. No such finding was inserted in the *Brockwell Park Case* (*vide infra*, p. 146), in which the rating authority failed.

that the case fell within *R. v. School Board for London* (z), and that the rate appealed against was right.

This decision abolished the rule laid down in *Metropolitan Board of Works v. West Ham* (a), that a pumping station must be rated at the rent for which it would let to a hypothetical tenant, if disconnected from the drainage scheme, and used for some other purpose. In other words, the *Burton Case*, in fixing the measure of rateable value, substitutes the value of the pumping station to the actual occupier for the value to other occupiers using the station in a different way.

The London Sewers Cases.—Before considering the decision of the House of Lords in these cases (given in 1893), it may be convenient to note the conflict of decisions which existed at the time. Sewers had been held to be not rateable, whether they lay under the surface of a highway (b) or were placed in a raised embankment above the surface of land which had previously been rated (c). A pumping station and sewage farm had been held to be rateable, although not profitable, in the *Burton Case* (d), because the actual occupiers would be willing to give a rent for such premises; and this decision was followed by the Court of Appeal in the first of the London County Council's appeals (e). An exception, first introduced in *Owen's College v. Chorlton-upon-Medlock* (f), was applied by the Court of Appeal to sewage works in *London County Council v. West Ham* (g), and, again, in *London County Council v. St. George's Union* (h), in which it was held, that if the actual occupier was prohibited by statute from being a tenant (as distinguished from the owner) of the premises to be rated, he must be excluded from consideration as a possible hypothetical tenant. These two cases were consequently in direct conflict with the first of the London County Council's cases. Moreover, the logical outcome of the principles on which the *Burton Case* was based was to make sewers as well as sewage works rateable. That case was therefore possibly in conflict with the earlier decisions above cited (i), in which sewers (whether above or below ground) were held not rateable.

The House of Lords, in *London County Council v. Erith and*

(z) (1886), 17 Q. B. D. 738, *infra*, p. 154.

(a) (1870), L. R. 6 Q. B. 193, *infra*, p. 154.

(b) *R. v. Metropolitan Board of Works* (1868), L. R. 4 Q. B. 15, *supra*, p. 135.

(c) *Metropolitan Board of Works v. West Ham* (1870), L. R. 6 Q. B. 193, *supra*, p. 136.

(d) *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197, *supra*, p. 140.

(e) *London County Council v. Erith*, [1893] A. C. 562; not reported in the courts below the House of Lords.

(f) (1886), 18 Q. B. D. 403; Ryde's Rat. App. (1886—1890), 256; *infra*, p. 153.

(g) [1892] 2 Q. B. 44.

(h) [1893] 1 Q. B. 210.

(i) *R. v. Metropolitan Board of Works; Metropolitan Board of Works v. West Ham*, *ubi supra*.

West Ham (*k*), dealt with these decisions in the following way: They overruled the *Owen's College Case* and the decisions which followed it; they affirmed the *Burton Case*; they overruled *Metropolitan Board of Works v. West Ham* (*l*), so far as that case decided that sewers in a raised embankment (on ground formerly rated) were not rateable; they neither affirmed nor (expressly) overruled *R. v. Metropolitan Board of Works* (*m*), in which it had been held that sewers under a highway were not rateable.

The judgment of the House of Lords was delivered by Lord HERSCHELL, L.C., who, after referring with approval to the judgment of BLACKBURN, J., in *Jones v. Mersey Docks* (*n*) (in which "beneficial occupation" was said to be essential as the foundation of the rate), continued (*o*):

"The learned judge, in my opinion, did not and could not have meant that it is essential to rateability that a particular occupier of the land can make a pecuniary profit by the use to which he is putting it. It is, I think, rateable whenever its occupation is of value" (*p*).

This part of the judgment dealt only with pumping stations, and the question remained whether the same principle applied equally to the sewer, and the House of Lords held that it did. The only sewer in question was a sewer in a raised embankment on land formerly rated. And Lord HERSCHELL, L.C., said (*q*):

"I confess I see the utmost difficulty in distinguishing such an erection as this upon the surface of land from any other erection specially suitable for the purposes of a particular occupier, but which might render it of less value for occupation by other persons not requiring it for that special purpose. And if, in general, owners who occupy land in order to discharge a duty imposed on them by statute may be regarded as amongst the hypothetical tenants, I cannot find any sound basis on which to rest a distinction in favour of the Metropolitan Board of Works or their successors, the London County Council, in respect of this particular use of the land which they own. . . . Even if the sewers are in general exempt from rateability, the particular sewer work in the parish of West Ham cannot be so treated."

Sewers and sewage works: by what criterion are they to be distinguished.—In *Mayor, etc., of Leicester v. Overseers of Beaumont Leys and Barrow-on-Soar Union* (*r*), in which the special case was stated before, but argued after, the decision of the House of Lords in *London County Council v. Erith and West Ham* (*s*), the appellants were rated for a sewage farm, and sewage works,

(*k*) [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413.

(*l*) (1870), L. R. 6 Q. B. 193, *supra*, p. 136.

(*m*) (1868), L. R. 4 Q. B. 15, *supra*, p. 135.

(*n*) (1865), 11 H. L. Cas. 443, at p. 462, *supra*, p. 133.

(*o*) [1893] A. C., at p. 585; Ryde's Rat. App. (1891—1893), at p. 421.

(*p*) This view is repeated in a passage part of which has been cited in discussing the phrase "struck with sterility"; *supra*, p. 139.

(*q*) [1893] A. C., at p. 600; Ryde's Rat. App. (1891—1893), at p. 436.

(*r*) [1894] Ryde and Konstam's Rat. App. (1894—1904), 140.

(*s*) [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413.

which included an underground rising main (up which the sewage was forced from a pumping station), tanks, open and underground channels for delivering the sewage on the sewage farm, and underground effluent culverts. As to the farm and parts of the works, it was conceded that they were rateable under the decision of the House of Lords; but the appellants contended that at all events the rising main and the other underground pipes were not rateable, on the ground that they were sewers. The court (though apparently assuming that ordinary sewers were exempt under the House of Lords' decision) held that the matters in question were not simple sewers, but were parts of or adjuncts to a system of sewage works on a sewage farm, and that they were rateable.

The effect of this decision appears to be that if sewage passes by the force of gravitation down an underground pipe, that pipe is a sewer, and (apparently) ought not to be rated; but if sewage passes, under artificial pressure, up an underground pipe, that pipe may be regarded (in some cases at least) as part of "sewage works," and ought to be rated.

Whether underground sewers are rateable.—The judgment of the House of Lords in *London County Council v. Erith and West Ham (t)* expressly left undecided the question whether sewers *under* ground are rateable, while expressly deciding that a sewer in an embankment raised above the surface of the ground, previously rated, was rateable. In a later case—*Ystradlyfodwg and Pontypridd Sewerage Board v. Newport Union (u)*—the Court of Appeal expressly decided that *some* underground sewers at least were rateable. In that case the sewerage board had constructed a sewage carrier $17\frac{1}{2}$ miles long, of which nearly $2\frac{1}{2}$ miles were in the parish of Rumney, to which the appeal related. The sewage carrier in that parish consisted partly of iron pipes carried on concrete arches above the surface of the ground, partly of pipes laid below the surface and ordinary level of the ground, partly of pipes below the surface, but covered by an artificial embankment of varying height which rose above the level of the adjacent land, and partly of pipes passing partly over and partly under the surface of the foreshore of the Bristol Channel. The sewerage board, under special contracts with the councils of three urban districts outside the area of the board, received the sewage from those districts into the sewage carrier, in consideration of annual payments of substantial amount made by the three district councils to the sewerage board, which payments much reduced the rate required to be levied by the board in their area. The sewage carrier merely carried the sewage

(t) [1893] A. C. 562; Ryde's Rat. App. (1891—1893) 413, *supra*, p. 142.

(u) [1901] 1 K. B. 406.

of distant towns through the parish of Rumney, and had no connection with any lands or buildings in that parish. The embankment varied from 18 inches to 6 feet in height above the ground, and was grazed over; it was not separated by any fence from the adjoining land, and cattle passed freely over it; and the assessment of the land, through which it passed, had not been altered by reason of the making of the embankment. The assessment committee had rated the whole of the sewage carrier at 800*l.* gross, and 700*l.* rateable value, but it is not stated in the case how this sum was arrived at. The sessions held that the portions of the sewage carrier which were underground, or in the embankment, were not rateable, and reduced the assessment. But the Court of Appeal (affirming the decision of the Queen's Bench Division) held that the whole was rateable. ROMER, L.J., in delivering the written judgment of the Court of Appeal, said (*x*):—

“Since the decision of the House of Lords (*y*) we think it must be taken that the authorities, which decided that certain underground sewers of public bodies were not liable to be rated, are not based on sound principle, and are to be regarded as anomalies in rating law. These authorities will certainly not be extended: and, to enable new sewers, which would be *prima facie* rateable according to ordinary principles, to escape from liability, it must be shown by their owners that they fall strictly within the narrow limits of the authorities we are referring to. On examination of the case of *R. v. Metropolitan Board of Works* (*z*), which is the leading one of the authorities in question, it will be found that the sewers there held not rateable had the following features:—(1) They were quite underground, so that the surface under which they ran was not occupied or in any way affected by them, and (2) no payment was made to the owners of the sewers for the use of them by others. We think that all sewers, which on general principles are *prima facie* rateable, and which are not protected by prior decisions, should be held rateable, unless the two features above mentioned are found to exist in relation to them (*a*). With regard to the first feature, it is true that in the case of the *Metropolitan Board of Works v. West Ham* (*b*) it was ruled that for rating purposes no distinction existed between a sewer carried underground and one carried upon an embankment; but after the decision of the House of Lords above mentioned, and the observations of Lord HERSCHELL, L.C., at p. 600 of the report of that decision (*bb*), we think that it can no longer be considered that that ruling is law. With regard to the second feature, it appears to us from the judgment of the court in the case of *R. v. Metropolitan Board of Works* (*c*) that that feature was treated as of great importance. In the judgment of the court delivered by LUSH, J., he observes significantly that the sewers he was dealing with were not ‘at present’ the subject of a beneficial occupation, and he proceeds to say that ‘no payment is made to the board for the use of them.’ We gather that, if any such payment had been made, the decision would have been the other way. It is true, judging from more recent authorities, that the judgment ought not to have been based on such

(*x*) [1901] 1 K. B. 413.

(*y*) *London County Council v. Erith and West Ham*, [1903] A. C. 562, *supra*, p. 142.

(*z*) (1868), L. R. 4 Q. B. 15: *supra*, p. 135.

(*a*) Note that both the conditions must exist to create exemption.

(*b*) (1870), L. R. 6 Q. B. 193; *supra*, p. 136.

(*bb*) *Supra*, p. 142.

(*c*) (1868), L. R. 4 Q. B. 15.

a distinction as that pointed out; but the appellants here cannot take advantage of that error on the part of the judges who decided the case in order to extend in their favour the ambit of an anomalous case based on no sound principle. And further we cannot find in any reported case, where sewers have been held not rateable, that it has been proved that payments were being made for the use of those sewers by others, and that this fact has been called to the attention of the court. . . . This carrier is new, and cannot claim an exemption from rateability for a long period. It is to a great extent above or on the surface, and even as to the part not immediately on the surface, we cannot say that it is so far below the surface as in no way to affect it. Moreover, in this case, we think that the sewage carrier in the parish of Runney, being one continuous construction, should be dealt with as a whole, and that it would not be right, as to the part below the surface, to dis sever the sewer, and to say as to that part that it is to be taken as an independent sewer, and be separately treated for the purposes of rating." [The learned judge further held that the receipt of contributions from other authorities was a further reason for holding the board rateable for the sewer.]

The judgment above cited accepts an anomaly, founded on no sound principle, mainly because, as was said by Lord HERSCHELL in *London County Council v. Erith and West Ham (d)*, it was inexpedient to interfere with a long course of practice supported by decisions not of very recent date. But it may be doubted whether the anomaly can remain long as it now stands. Two conditions are required to make a sewer not rateable: (1) it must be entirely underground, so as in no way to affect the surface; (2) there must be no contribution to its owners paid by other persons for the use of it. As to the first condition, it seems absurd that a sewer, which would otherwise be exempt, should lose the exemption because a part of it, *in another parish*, rises above the ground, or (if this be not enough to take away the exemption) that exemption in any given parish should depend upon the question whether the parts above ground are inside or outside the parish boundary; and that the total rateable value of any given sewer should depend upon the question whether the parts above ground are all included in one parish, or are distributed through the various parishes in which the sewer lies. For on this view, if all the parts above ground are in one parish, the sewer is rateable in that parish only; whereas if the parts above ground are distributed through all the parishes, the whole of the sewer is rateable.

As to the second condition;—if two districts combine to make a sewer, and allow a third district to use it on payment of an annual contribution towards the expenses, the sewer is rateable; but if the three districts combine to make the same sewer at their joint expense, the sewer is not rateable.

(d) [1893] A. C. 569, at p. 599; Ryde's Rat. App. (1891—1893), 413, at p. 436. Cf. *Cresc v. Sawle*, [1842] 2 Q. B. 862, at pp. 885, 886; *R. v. Sheffield Gas Co.*, [1863] 32 L. J. M. C. 169, at p. 172.

Again, the main reason why the London County Council were held rateable for their sewer above the ground in West Ham, was that they had a beneficial occupation of it, in that it enabled them to discharge their statutory duty of disposing of the sewage of London, to the great benefit of London. But it seems absurd that if such a sewer be underground, this great benefit should be ignored, while the receipt of a comparatively trifling sum from another local authority may be held sufficient to make the sewer rateable.

The anomalies here pointed out are anomalies as between one sewer and another. The further anomalies as between underground sewers and underground railways, or gas or water pipes, must not be forgotten.

Brockwell Park Case.—In *Lambeth Overseers v. London County Council* (e), an attempt was made to rate the London County Council in respect of Brockwell Park, acquired by them under a local Act, which provided that the council might purchase the park, and, when they had acquired it, should hold and maintain it as a park for the perpetual use thereof by the public for exercise and recreation. The necessary expenses of maintaining the park as a whole with the buildings upon it far exceeded any sums of money which were or could be derived from licences for the supply of refreshments, or for grazing rights, or otherwise. There were houses in the park, used as residences for the constables, and superintendent; and other buildings used as a public gymnasium, shelters, store-room, tool-shed, and the like. The park was open to the public by day, but at night they were excluded, and the gates were locked by the servants of the county council. It was found as a fact that if the county council had had a duty to provide an open space for the public, and had wished to take the park as tenants, they would have had to pay a rent sufficient to support the rate. The Queen's Bench Division held that the county council had a beneficial occupation and were rateable. The Court of Appeal reversed this decision, holding that the occupation was not beneficial; and the House of Lords held (1) that the county council were not in occupation at all, and (2) that the occupation was, at all events, not beneficial (f).

The decision of the Court of Appeal and of the House of Lords, that the occupation of the county council was not beneficial because they could make nothing by it, must be considered with reference to the fact that the county council had no duty to

(e) [1897] A. C. 625; 76 L. T. 795; 46 W. R. 79; 61 J. P. 580; 66 L. J. Q. B. 806.

(f) Lord HALSBURY, L.C., relied mainly on the first ground, but "did not disagree with the reasoning" of the Court of Appeal, which related almost entirely to the second ground. Lord HERSCHELL based his judgment mainly on the second ground.

provide a park, and to the very limited finding of fact (g), that *if they had wished to take the park as tenants*, they would have had to pay a rent sufficient to support the rate. Unless these facts be remembered, some of the passages in the judgments in the *Brockwell Park Case* are in conflict with the principle that pecuniary profit is not essential to "beneficial occupation." Thus, Lord HALSBURY, L.C., said (h) :

"No tenant would give anything for an occupation which would not give him a capacity to earn more than the rent which he is called upon to pay for it, and if the statute, as in this case, prevents him from earning anything, there can, under the Parochial Assessment Act, be no rateable occupation, as under that Act the rate is to be measured by the rent which a tenant would pay."

It cannot be supposed that in this judgment Lord HALSBURY intended to overrule the decisions of the Court of Appeal in *R. v. School Board for London* (i) and *Mayor, etc. of Burton-upon-Trent v. Burton-upon-Trent Union* (k), and of the House of Lords in *London County Council v. Erith and West Ham* (l), which established the proposition that *where a public body have to perform a duty* which involves the occupation of land, the absence of pecuniary profit arising from that occupation does not prevent the occupation from being beneficial. In the *Brockwell Park Case* (in the passage cited above), Lord HALSBURY was dealing with land, which was not occupied in order to discharge a public duty, and from the occupation of which no profit could arise : nor was there any finding that the county council would have taken the land for any other motive. The tenant would then have no motive for giving rent for such land, and it could be said to be incapable of beneficial occupation, without contradicting [the other cases above cited (m)].

The decision in the *Brockwell Park Case* was followed in dealing with a similar public park in *Mayor, etc. of Manchester v. Chorlton Union* (n), and was held to apply, although under s. 44 of the Public Health Acts Amendment Act, 1890 (o), the corporation, in whom the park in question was vested, had power to close it for a limited number of days, for the purposes of any agricultural or

(g) Compare the findings in *London County Council v. Erith and West Ham*, [1893] A. C. 562, *supra*, p. 141 ; and in *Mayor, etc. of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197, *supra*, p. 140 ; and see the remarks of A. L. SMITH, L.J., *hereon*, [1896] 2 Q. B., at pp. 38, 39.

(h) [1897] A. C., at p. 630.

(i) (1886), 17 Q. B. D. 738, *supra*, p. 138.

(k) (1889), 24 Q. B. D. 197, *supra*, p. 140.

(l) [1893] A. C. 136, *supra*, pp. 141, 142.

(m) Those cases were expressly recognised by A. L. SMITH, L.J., whose judgment was approved by Lord HALSBURY.

(n) Q. B. D., April 22nd, 1899, *coram* DARLING and CHANNELL, JJ. : see the *Times* newspaper, April 24th, 1899.

(o) 53 & 54 Vict. c. 59. This Act did not apply to the Brockwell Park, which was situated within the metropolis.

other show, and to make a charge for admission. It is submitted that in order to establish rateability, it would be necessary to prove the exercise, as well as the existence, of such a power; and, further, a balance of income over the general expenses of maintenance, resulting from such exercise.

It may here be mentioned, though it is not absolutely clear that the decision is in point, that in the case of a common dedicated to the public as a recreation ground, and vested in the London County Council for that purpose, it has been held that the London County Council are not liable for paying expenses as "owners" of the common within the definition in s. 250 of the Metropolis Management Act, 1855, even though the county council have erected lodges on the common for the keepers, and derive small annual profits from the letting of the herbage and a refreshment room (*p*). By the definition above referred to, "owner" means "the person receiving the rack rent, or who would receive the same if the lands were let at a rack rent."

(*p*) *London County Council v. Wandsworth Borough Council*, [1903] 1 K. B. 797. Compare *Great Eastern Rail. Co. v. Hackney* (1883), 8 App. Cas. 687.

PART II.

THE MEASURE OF LIABILITY.

CHAPTER XIII.

RATEABLE VALUE.

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Preliminary.—The Statute of Elizabeth does not accurately define how the value of land is to be measured: it speaks of “taxation” of the occupiers and other persons “in such competent sums of money as they (the overseers) shall think fit,” and of

collecting a stock of goods "according to the ability of the parish." It is, however, implied in the statute that the rate must be made with equality (*a*), and it was early so decided (*b*); and for many years decisions on questions of amount were little more than examples of attempts to ascertain how "equality" among the several ratepayers was to be arrived at.

If each parish were a separate rating area for all purposes, levying its own rates for expenditure, falling upon that parish only, it would make no difference to the several ratepayers *inter se* whether the rate were imposed on the whole, or the half, or the quarter, of the value of each and all of the rateable hereditaments in the parish, provided that one and the same proportion were applied to all. Any reduction in the annual value involves a corresponding increase in the rate in the pound, since the total sum to be levied by the rate must be raised in any event: and it makes no difference to the occupier of a house worth 100*l.* a year whether he pays a rate of 1*s.* on 100*l.*, or a rate of 2*s.* on 50*l.* Before the passing of the Parochial Assessments Act, 1836, it was by no means uncommon to levy the rate upon the half, or on some other fraction of the yearly value of property (*c*). But at the present day a large part of local expenditure is levied by such bodies as guardians of unions, and county councils, whose jurisdiction extends over several parishes. In order that the rates made to meet the expenditure of such authorities may be fairly imposed, it is essential that the same measure of value be applied to each and all of the parishes.

The definition of net annual or rateable value.—The question whether an occupier is to be rated or not, depends on the Statute of Elizabeth, as modified by certain statutes creating special exemptions in favour of particular classes of property (*d*). When it has been shown that an occupier is rateable, the question on what sum he is to be rated depends on the definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836 (*e*); or, in the case of land within the "metropolis" as defined by s. 4 of the Valuation (Metropolis) Act, 1869 (*f*), on the definition of "rateable value" in s. 4 of that Act.

(*a*) *Vide per* PARKE, J., in *R. v. Adames* (1832), 4 B. & Ad. 61, at p. 66.

(*b*) *R. v. Audley* (1700), 2 Salk. 526; 1 Const. 110. See also an *Anonymous Case* (1688), Comb. 479; 1 Const. 110; in which the court appear to have considered that the rate must have regard "*ad statum et facultates*," that is, the personal ability of the occupier as well as the value of the land occupied.

(*c*) See, for example, *R. v. Brograve* (1769), 4 Burr. 2491; 1 Const. 112; *R. v. Hardy* (1777), 2 Cowp. 579; *R. v. Trustees of Duke of Bridgewater* (1829), 9 B. & C. 68; *R. v. Tomlinson* (1829), 9 B. & C. 163; *R. v. Adames* (1832), 4 B. & Ad. 61, at p. 67.

(*d*) These are considered in Chapters VII.—XI.

(*e*) 6 & 7 Will. 4, c. 96; set out in Appendix II.

(*f*) 32 & 33 Vict. c. 67; set out in Appendix II.

The Parochial Assessments Act, 1836, by s. 1 enacts as follows :

“No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force (*g*), which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto ; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes (*h*), and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent: Provided always (*i*), that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.”

This definition was supplemented by the definition of “gross estimated rental” in s. 15 of the Union Assessment Committee Act, 1862 (*k*), which is (in substance) the yearly tenant's rent, without making the deduction of “the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain the hereditaments in a state to command the rent,” which are to be deducted in order to arrive at the “net annual value.” If the cost of the repairs, insurance, etc., be deducted from the “gross estimated rental,” the remainder is the “net annual value.”

It must be specially noticed that the definition of “gross estimated rental,” as well as the definition of “net annual value,” assumes that the tenant pays the usual tenant's rates and taxes and tithe commutation rentcharge (if any). Under the Tithe Act, 1891 (*l*), tithe rentcharge, as defined by that Act, is payable by the owner of the lands out of which it issues ; and as the rentcharge is itself rateable separately from the land, the rentcharge must be deducted from the rent paid by the tenant in order to ascertain the gross value of the land. If this were not done, so much of the rent as represents the tithe rentcharge would be rated twice over : once as part of the value of the land in rating the occupier and once as the value of the tithe rentcharge in the hands of the owner of that rentcharge.

The term “net annual value” is defined, as above, in s. 1 of the Parochial Assessments Act, 1836 ; but the form of rate set out in

(*g*) The form of the section is due to the existence of the practice referred to in the preceding paragraph, as appears from the recital in the preamble to the Act, that “it is desirable to establish one uniform mode of rating.”

(*h*) *Vide infra*, p. 157.

(*i*) It is not at all clear that this proviso (which was inserted to protect the clergy in respect of the rating of tithe rentcharge) has any operation : see *R. v. Capel* (1840), 12 A. & E. 382, at pp. 411, 415 ; *L. v. Goodchild* (1858), E. B. & E. 1 ; 27 L. J. M. C. 233 ; see Chapter XXIII., *infra*.

(*k*) 25 & 26 Vict. c. 103, set out in Appendix II.

(*l*) 54 & 55 Vict. c. 8, s. 1 : see Chapter XXIII. *infra*.

the schedule to the Act (*m*) uses the term “rateable value” as equivalent to “net annual value,” and the two terms are in practice used as identical in meaning.

The definitions of gross and rateable value in the metropolis.

—In the “metropolis,” as defined by s. 4 of the Valuation (Metropolis) Act, 1869 (*n*), the terms “gross value” and “rateable value” are thus defined by that section :

“The term ‘gross value’ means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant’s rates and taxes, and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent :

“The term ‘rateable value’ means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid.”

These definitions are substituted as to the “metropolis” for the earlier definitions of “gross estimated rental” and “net annual value,” which are repealed (*o*), so far as they relate to the “metropolis” ; but the substitution is apparently made in order to remove doubts which at one time existed as to the meaning of the earlier definitions, and not to create a new measure of value.

Annual rent as a measure of value.—Although the reference to annual rent as a measure of value first appeared in a statute on the passing of the Parochial Assessments Act, 1836, the object of that Act “does not appear to have been to introduce any new principle of rating, but to affirm that which had already been established by decisions” of the Queen’s Bench (*p*). And the various parts of the definition of “net annual value” may be collected from judgments delivered before the passing of that Act (*q*).

The hypothetical tenant.—The form of the definition of “net annual value” in s. 1 of the Parochial Assessments Act, 1836,

(*m*) Set out in Appendix II. The same form uses the term “gross estimated rental,” without a definition, which was first supplied by s. 15 of the Union Assessment Committee Act, 1862. The form of valuation list in the schedule to that Act (see Appendix II.) also uses the term rateable value.

(*n*) The section is set out in Appendix II. The “metropolis” comprises the whole of the administrative county of London, including the city of London : *vide infra*, Chapter XXVI.

(*o*) See s. 77 and sched. 5, of the Valuation (Metropolis) Act, 1869, in Appendix II.

(*p*) *Per* Lord DENMAN, C.J. : *R. v. Lumsdaine* (1839), 10 A. & E. 157, at p. 160.

(*q*) See, for example, *R. v. Oxford Canal Co.* (1825), 4 B. & C. 74, at pp. 80, 82 ; *R. v. Athwood* (1827), 6 B. & C. 277 ; *R. v. Trustees of Duke of Bridgewater* (1829), 9 B. & C. 68 ; *R. v. Tomlinson* (1829), 9 B. & C. 163, at p. 166 ; *R. v. Lower Milton* (1829), 9 B. & C. 810, at p. 819 ; *R. v. Adames* (1832), 4 B. & Ad. 61, at p. 67.

led to the use of the term "hypothetical tenant," which is not, however, used in any statute (r).

The property to be rated must be assumed to be let, and the fact that it is occupied by the owner is immaterial (s). All possible occupiers, including the actual occupier, must be taken into account as possible tenants from year to year (t). In *Owens College v. Chorlton-upon-Medlock* (u), it was held that if the actual occupier were prohibited by statute from being tenant (as distinguished from being owner) of the hereditament, he must be excluded from consideration as a possible yearly tenant; but this decision has now been expressly overruled by the House of Lords in *London County Council v. Erith and West Ham* (x).

The effect of the decision of the House of Lords is that, even though it may be impossible in fact, and forbidden by law, that the actual occupier should be a yearly tenant of the hereditament to be rated, still for the purpose of valuing that hereditament it must be supposed that the actual occupier is among the possible yearly tenants; and unless the supposition be made, most absurd anomalies result. "For instance, if a patentee were to buy premises, and to fit them up with machinery forming part of the rateable hereditament, at the cost of thousands of pounds, for the purpose of manufacturing articles under his patent, though the premises were of immense value to him, yet inasmuch as no other person could use them, they must [if the patentee were excluded from consideration] be rated at the nominal rent which they would command as a furniture store" (y). Again, a line of railway may be of great value to the company which owns and occupies it; but if that company be excluded from consideration because it has no power to become a tenant of its own line, then, as no other company has power to become a tenant, the line has no rateable value.

The actual occupier regarded as a possible tenant.—At the time when it was still doubtful (z) whether the possibility of making a profit out of the occupation was not necessary to create "beneficial occupation," which was the foundation of rateability, the Queen's Bench had to deal with a pumping station, connected

(r) It is believed that the first appearance of the phrase in a reported case is to be found in *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716, at p. 722: see *R. v. Sheffield Gas Co.* (1863), 32 L. J. M. C. 169, at p. 172.

(s) *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 596; *Ryde's Rat. App.* (1891—1893), 413, at pp. 432, 433.

(t) *R. v. School Board for London* (1886), 17 Q. B. D. 738; *Ryde's Rat. App.* (1886—1890), 235.

(u) (1887), 18 Q. B. D. 403; *Ryde's Rat. App.* (1886—1890), 256.

(x) [1893] A. C. 562; *Ryde's Rat. App.* (1891—1893), 413.

(y) See the argument of Mr. H. B. POLAND, Q.C., in *School Board for London v. Islington* (1885), *Ryde's Met. Rat. App.* 393, at p. 396; in substance adopted by Lord HERSCHELL, L.C., in *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 589.

(z) *Vide supra*, pp. 128—132.

with the system of sewers, vested in the Metropolitan Board of Works (*a*). The court held that the sewers were not rateable (*b*), but that the other works were rateable, because other tenants, besides the Board, would take them; and the court adopted as correct an admission by the parties that the other works should be rated "at the value for which the same would let to a hypothetical tenant from year to year, supposing they were not used for the purpose of the main drainage scheme, but were entirely disconnected therefrom, and applied to any other use or purpose for which they could be made available by a tenant thereof." As the works were of far greater value to the Board than to anybody else, the effect of this contention was to reduce very materially the rateable value of the sewage works.

An attempt was subsequently made in *R. v. School Board for London* (*c*), to apply this contention to public elementary schools. It having been decided (*d*) that a school board was rateable for its schools, because (although it could make no profit) it could let the schools to other tenants who might make a profit, it was contended that the measure of the rateable value of the schools was the rent which such other tenants would give; and evidence was given (*e*) of the value which the schools would have if used for such manufacturing purposes as they could be used for without alteration. But the Court of Appeal held (*f*), affirming the decision of the Queen's Bench Division (*g*), that the School Board must be taken into account as among the possible hypothetical tenants. Lord Esher, M.R., said (*h*):

"The real question is how the value is to be ascertained. The inquiry is not as to what rent is paid by the actual occupier (*i*). The mode of finding out the value is laid down in the Act (*k*), and it is to ascertain the rent which a tenant (not *the* tenant), taking one year with another, might reasonably be expected to pay; it is also implied that where the owner occupies he is to be considered as if he were a tenant. The directions given by the Act are equivalent to saying that one must look at all possible tenants, and the phraseology does not exclude an owner who himself occupies the premises. . . . It is said that the School Board ought to be excluded because it can never obtain any beneficial interest from its tenancy: but it can be a tenant; it has a duty to perform which may induce or force it to be a tenant. It follows therefore that it would be wrong to exclude the School Board from the list of possible hypothetical tenants, whether it is in the position of owner or in that of occupier."

(*a*) *Metropolitan Board of Works v. West Ham* (1870), L. R. 6 Q. B. 193.

(*b*) *Vide supra*, p. 136.

(*c*) (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235.

(*d*) See *West Bromwich School Board v. Overseers of West Bromwich* (1884), 13 Q. B. D. 929, *supra*, p. 138.

(*e*) See Ryde's Met. Rat. App., at pp. 373—401.

(*f*) 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235.

(*g*) 55 L. J. M. C. 33.

(*h*) 17 Q. B. D., at p. 740.

(*i*) *Vide infra*, p. 155.

(*k*) The Valuation (Metropolis) Act, 1869, s. 4; set out in Appendix II.

And BOWEN, L.J., said (*l*) :

“The rate is to be made upon an estimate of the rent at which the premises might reasonably be expected to let from year to year; that must mean to let to some one who wants to hire them. The question is whether the School Board is to be excluded from the list of possible occupiers. If the inquiry is made whether it might reasonably be expected that the premises would be let to the School Board, the answer must be in the affirmative. That being so, it seems impossible to exclude the School Board. The case cannot fairly be decided on the hypothesis that the one person who wants the premises most would not take them.”

And FRY, L.J., said (*m*) :

“The Valuation (Metropolis) Act, 1869, in s. 4, defines ‘gross value’ as meaning ‘the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament,’ etc. That refers to the annual rent which any tenant might reasonably be expected to pay to any landlord, and the actual owner and occupier are not excluded. The question was asked why the actual occupier is not to be treated as a possible tenant, and no answer has been given except one. It is said that the School Board is not to be considered as a possible tenant, because though it occupies the premises, it can make no profit out of them; but a man who occupies a house for his own comfort might as well be excluded. The term ‘sterility’ has been introduced into the cases (*n*), because as a general rule a profit is produced, but it does not by any means follow that because there is no profit there is no value. There could be no better illustration of this than the present case. The only question is whether the person to be considered as a tenant could reasonably be expected to take the premises from any motive.”

The principle laid down by this decision was affirmed and adopted by the House of Lords in *London County Council v. Erith and West Ham (o)*, and is now firmly established as correct.

The rent actually paid is not the measure of value.—The actual occupier must be regarded as a possible hypothetical tenant, but the rent which the occupier actually pays is not the measure of rateable value. This was held to be the law long before the Parochial Assessments Act, 1836, was passed, defining “net annual value.” Thus in *R. v. Skingle (p)*, it was held that the rent paid under a lease, granted some years before the making of the rate, was not conclusive evidence of value, where evidence was tendered to show that the lands had increased in value since the date of the lease. Under the Parochial Assessments Act, 1836, it has never been contended that rent is conclusive evidence of value, and in

(*l*) 17 Q. B. D., at p. 741; Ryde's Rat. App. (1886—1890), at p. 239.

(*m*) 17 Q. B. D., at p. 741; Ryde's Rat. App. (1886—1890), at p. 240.

(*n*) *Vide supra*, pp. 138, 139.

(*o*) [1893] A. C. 562, at pp. 588, 589; Ryde's Rat. App. (1891—1893), 413, at p. 424. See also *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197, *supra*, p. 140.

(*p*) (1798), 7 T. R. 549.

R. v. School Board for London (q) Lord ESHER, M.R., expressly lays down that "the inquiry is not as to what rent is paid by the actual occupier."

But though the rent actually paid is not the measure of rateable value, or even conclusive evidence of value at the date when the rent was fixed, if a rent payable under a yearly tenancy has been fixed recently without payment of any premium or the like, it may be taken as *prima facie* evidence, liable to be rebutted. This may be done in many ways (apart from fraud, which of course disposes of it at once): thus it may be shown that the rent was not fixed by the "higgling of the market," but by personal considerations (for example, if the landlord be the father of the tenant); or it may be shown that the so-called rent really includes the price paid for the goodwill of the business previously carried on there (r). Of course the *prima facie* evidence of value furnished by the rent, if uncontradicted, may become conclusive; but it is submitted that the sessions, when rent is put forward as evidence of value, should always act upon the rule that it is open to either party "to show that the rent agreed to be paid was a misconception, and that if the agreement had to be made again, a different rent would be given" (s).

The question how far the rent of a railway station or line is evidence of rateable value will be dealt with hereafter, when it will be found that rent *paid* by the company which is rated stands upon a different footing from rent *received*, e.g., for the joint use of a station or the exercise of running powers (t).

Rents paid by weekly tenants.—Where property is let to weekly tenants at rents which are made the basis of the calculation of annual value, certain deductions have to be made from the aggregate of the weekly rents.

In *Smith v. Churchwardens of Birmingham* (u), the recorder found as a fact that a house could reasonably be expected to let from year to year at a rent equal to fifty-two times the weekly rent, and with this finding of fact the judges refused to interfere. It is believed that most surveyors would disagree with this finding of fact. Acting on this finding, the judges held that no deduction must be made from the aggregate of the weekly rents in respect of "voids and losses" (i.e., rent not paid while premises were empty, or rent not recovered from the tenant) or for the cost of collection.

(q) (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890), 235, *supra*, p. 154. See also *Hayward v. Overseers of Brinkworth* (1864), 10 L. T. 608.

(r) The question of "goodwill" is further discussed in Chapter XXIV.

(s) *East London Rail. Co. v. Greenwich Union*, Ryde's Rat. App. (1886—1890), 210, at p. 219; *per* Sir P. H. EDWIN, Q.C., Chairman of London Quarter Sessions.

(t) See Chapter XIV., *infra*, pp. 241—243.

(u) (1888), 22 Q. B. D. 211, 703; Ryde's Rat. App. (1886—1890), 297.

In the case of houses let to weekly tenants or of flats the landlord generally undertakes to pay all rates, taxes, and water rate, and sometimes undertakes other duties. As under s. 1 of the Parochial Assessments Act, 1836, the rateable value is measured by a rent which is "free of all usual tenant's rates and taxes," it is plain that where these are included in the rent actually paid, a deduction must be made representing that part of the rent which the landlord will pay away in tenant's rates and taxes. The sum to be deducted must *not* be calculated by applying the rates levied to the total annual rent received (*x*). Thus if, after all other necessary deductions are made, the annual rent (including rates) is £10, and the rates amount to 5s. in the pound, the sum to be deducted is not 50s., but 40s., that is to say, 5s. in the pound on £8, which is the net rent after deducting the rates on £8 from the gross rent of £10. The calculation involves the following proportion (taking these figures by way of example) :—

25s. : 20s. : : rent including rates : rateable value.

The "tenant's rates and taxes" do not include the land tax (*y*) ; but deductions ought to be made for rates made by commissioners of sewers for embankments to preserve land from being flooded, either as being tenant's rates or as being "expenses necessary to maintain the hereditament in a state to command the rent" (*z*). So, too, in the case of a fishery, a rate payable under a local Act to commissioners for the preservation of fish is part of the same expenses (*a*).

In the case of artisans' dwellings, consisting of separate tenements approached by a common stair, where the tenants paid (in addition to the rent proper) a sum of 6*d.* a week for the lighting and cleaning of the staircase and for other services, it was held (*b*) that this sum must be added to the rent, because the expense of performing these services must be assumed to be borne by the landlord under the definition of "gross value" in s. 4 of the Valuation (Metropolis) Act, 1869 (*c*). This decision seems to involve the necessary consequence that the expense of performing the services must be deducted from the gross to arrive at the rateable value.

"Water rate," charged on premises for water supplied to them, is, strictly speaking, not a rate at all, but may be compared to a

(*x*) Cf. *Tyne Improvement Commissioners v. Chirton* (1862), 32 L. J. M. C. 192.

(*y*) *R. v. Goodchild (The Hackney Tithe Case)* (1858), 1 E. B. & E. 1, at p. 47.

(*z*) *R. v. Hall Dare* (1864), 34 L. J. M. C. 17 ; *R. v. Gainsborough Union* (1871), L. R. 7 Q. B. 64 ; cf. *R. v. Adames* (1832), 4 B. & Ad. 61, decided before the passing of the Parochial Assessments Act, 1836 ; but see also *R. v. Vange* (1842), 3 Q. B. 242, and the remarks on that case, *infra*, p. 174.

(*a*) *R. v. Smith* (1885), 55 L. J. M. C. 49.

(*b*) *Pullen v. St. Saviour's Union*, [1900] 1 Q. B. 128 ; *Ryde & Konstam's Rat. App.* (1894—1904), 33.

(*c*) See Appendix II., *infra*.

charge for gas, bread, or any other necessary of life; and therefore, where the rent includes such a "water rate," a deduction should be made in calculating the rateable value (*d*). The case of *R. v. Bilston* (*e*) is at first sight a decision to the contrary: but the sessions had found what was the gross estimated rental of a house, and the only question for the Queen's Bench was whether the water rate was an expense necessary to maintain the hereditament, which it clearly was not.

Where the landlord compounds for the rates the full amount which would be payable by the tenant must be deducted, and not merely the reduced sum payable by the landlord (*f*).

Existing, not future, value is the measure.—The definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836 (*g*), makes the rent at which the hereditament might be expected to let "*from year to year*" the measure of value. The definition of "rateable value" in s. 4 of the Valuation (Metropolis) Act, 1869 (*h*), uses the phrase "the rent which a tenant might reasonably be expected, *taking one year with another*, to pay." It is believed that it has never been contended in any court that the words used in s. 4 of the Valuation (Metropolis) Act, 1869 (which applies only to the metropolis), create a measure of rateable value different from that prescribed by the Parochial Assessments Act, 1836, which is in force outside the metropolis; and the alteration of language has been generally, if not universally, assumed to be due to a desire to make clear, and not to alter, the existing law (*i*). With this word of warning, that the words of the two Acts are not identical, we may proceed to notice the decisions.

Both before and after the Parochial Assessments Act, 1836, was passed, it was held that property must be valued as it exists at the time when the rate is made, with all the then existing circumstances, or, as it has frequently been expressed, "*rebus sic stantibus*." Land without buildings must be valued as such: and when buildings are put up or pulled down, the value of the land will rise or fall accordingly (*k*). So that, to a certain extent,

(*d*) *Smith v. Churchwardens of Birmingham* (1888), 22 Q. B. D. 211, 703; Ryde's Rat. App. (1886—1890), 297. Note that there was no appeal from the decision of the Queen's Bench Division on this point.

(*e*) (1865), L. R. 1 Q. B. 18.

(*f*) *R. v. Dodd* (1865), L. R. 1 Q. B. 16; *S. C. sub nom. R. v. Bilston*, 35 L. J. M. C. 97; but see also *Smith v. Mayor, etc. of Birmingham* (1883), 11 Q. B. D. 195.

(*g*) *Vide supra*, p. 151.

(*h*) *Vide supra*, p. 152.

(*i*) See, for example, the judgment of BLACKBURN, J., in *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515, at p. 519, cited in note (*a*), *infra*, p. 160.

(*k*) *R. v. Gardner* (1774), 1 Cowp. 79, at p. 84; *R. v. Mast* (1795), 6 T. R. 154, at p. 156; *Kenpe v. Spence* (1779), 2 Wm. Bl. 1244, at pp. 1248, 1249. See also *R. v. Skingle* (1798), 7 T. R. 549, *supra*, p. 155.

by determining the use to which he will put his land, the occupier can determine the amount at which he shall be rated : and it was early decided that for the hardship laid upon other ratepayers by one occupier, who reduces his own rating, there is no remedy (*l*). The rates “do and must depend upon the will of the proprietor. The owner of a house may, if he pleases, pull it quite down, and convert it into a toft. The owner of lands may, if he pleases, suffer them to lie barren and unoccupied” (*m*). But here a distinction must be noticed. The owner of a house, if he does not occupy it at all, is not rateable for it. But, if he occupies it, he is rateable for the full value of the house, although he makes very little use of the house as a whole, and does not use some of the rooms at all (*n*). And the house must be valued as it stands : a dwelling-house must be valued as such, and not at the higher value which it would possess if converted into a shop : and the supposition of a tenancy is only a mode of ascertaining the existing value to the existing occupier (*o*).

“The true principle, according to which the value of the occupation to the hypothetical tenant contemplated by the Parochial Assessments Act is to be estimated, is to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that those circumstances are about to undergo a change” (*p*). In the language of Lord DENMAN, C.J., “Nothing can be more unreasonable than to rate land occupied in one mode as if it were occupied in another, the modes producing different rates of profit, and commanding different amounts of rent” (*q*). The rateable quality of land is not to be determined by what it once was, or by what it may hereafter become. It must be determined by what it was at the time the rate was made (*r*). So that the tenant of an exhausted coal mine is not rateable, though he may continue to pay rent under his lease (*s*). One must “ascertain the rateable value of a heredita-

(*l*) *Kempe v. Spence*, *ubi supra* ; *R. v. St. Luke's* (1760), 2 Burr. 1053, at p. 1064. See also *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, at p. 86, *per* Lord CAIRNS.

(*m*) *Per* Lord MANSFIELD : *R. v. St. Luke's*, *ubi supra*.

(*n*) *R. v. Aberystwith* (1808), 10 East, 354, *supra*, p. 14.

(*o*) Lord DENMAN, C.J. : *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at pp. 39, 43.

(*p*) *Per* COCKBURN, C.J. : *R. v. Fletton* (1861), 30 L. J. M. C. 89, at pp. 94, 95 ; 3 E. & E. 450.

(*q*) *R. v. Everist* (1847), 10 Q. B. 178, at p. 207. See also the judgment of BLACKBURN, J., in *Staley v. Castleton* (1864), 33 L. J. M. C. 178, at p. 182, *infra*, p. 160.

(*r*) *Per* LUSH, J. : *Metropolitan Board of Works v. West Ham* (1870), L. R. 6 Q. B. 193, at p. 198 ; approved, *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 600. See also *Lambeth Overseers v. London County Council*, [1897] A. C. 625, at p. 629. The passages referred to in this note deal, perhaps, with the question of rateability or non-rateability, but they seem equally applicable to the question of amount, viz., at what sum is rateable property to be valued ?

(*s*) *R. v. Bedworth* (1807), 8 East, 387.

ment in a particular parish by ascertaining what that hereditament would let for in its then condition from year to year" (*t*). And consequently a house in course of construction cannot be rated (*u*).

The question whether land, which is suitable—but not actually used—for building purposes, ought to be rated at its value for building purposes or for the purpose to which it is actually applied for the time being, is therefore covered by authority, and is answered by decisions spread over a period long before the passing of the Parochial Assessments Act, 1836, and extending to the present time.

Tenant from year to year, not a tenant for a term of years.—Although the occupier is rateable for the full value of his property, even when he chooses to make very little use of it, yet where property is (wholly or partly) out of use, owing to circumstances which prevent the actual occupier (or any other person) from making full use of it, the rateable value must be reduced accordingly. The leading case on this subject is *Staley v. Castleton* (*x*), which related to a cotton mill closed during the continuance of the American civil war. The mill contained machinery (*y*), which was cleaned and kept in working condition (steam being constantly kept up in the boiler), but none of it was used for manufacturing purposes. It was held that the occupier of the mill was rateable for it, at the rent which it would command as a storehouse for the machinery contained in it, and not at the rent which it would command if the mill were in full work. BLACKBURN, J., said (*z*) :

“The hypothetical tenant from year to year would give nothing for it as a cotton mill. It is possible that the present state of things will improve, and that a tenant could be found who would be willing to take it for a term on a larger rent, reckoning that that supposition will be realized. But that is not the way the probable rent is to be arrived at. That would change the words of the statute, and instead of the words to let ‘from year to year’ would introduce the words ‘for a reasonable term of years’ (*a*). The result would

(*t*) *Per* Lord HERSCHELL, L.C. : *Sculcoates Union v. Hull Docks*, [1895] A. C. 136, at p. 142.

(*u*) *Tyne Coal Co. v. Wallsend Overseers* (1877), 46 L. J. M. C. 185, *infra*, p. 389.

(*x*) (1864), 33 L. J. M. C. 178.

(*y*) Part, at least, of the machinery appears to have been considered *not* to have formed part of the rateable hereditament : as to this point, see Chapter XXV. If this had not been assumed, apparently, the mill would have been held not to be rateable at all, and would have been exactly similar to an unoccupied house : *vide supra*, pp. 11—13.

(*z*) 33 L. J. M. C., at pp. 181, 182.

(*a*) Compare the judgment of BLACKBURN, J., in *R. v. Abney Park Cemetery Co* (1873), L. R. 8 Q. B. 515, at p. 519. This decision was given with reference to a cemetery to which the definition of “rateable value” in s. 4 of the Valuation (Metropolis) Act, 1869, applied. Notwithstanding this, BLACKBURN, J., refers to the definition of “net annual value” in s. 1 of the Parochial Assessments Act, 1836, which was repealed as to the metropolis. The difference in the language of the two definitions (referred to on p. 158, *supra*) was either overlooked, or was considered to make no difference.

be that if a man was driving a shaft with the expectation of meeting a valuable vein of minerals, he would be rateable upon some probable value for those minerals before he ever reached them, and though he was deriving no benefit whatever from his labour and expense (*b*). The law is not so, but the legislature intended that the rate should be made upon the rent which might be reasonably expected from a tenant who took the property from year to year, *rebus sic stantibus*. If there be waste land near a large city which is entirely unprofitable, it is not rateable although in after years it might become exceedingly valuable. That was the case in *Attorney-General v. Lord Sefton* (*c*), where it was held that the duty (*d*) did not attach in respect of land which at the time of the defendant succeeding to it was unproductive, though it might afterwards be valuable as building land. No doubt if the mill was about to be sold, the rent that a tenant for a term would give for it would very properly be taken into account, but not in ascertaining what a tenant from year to year would give. Deferred and reversionary prospects are not to be taken into account."

Application of the decision in *Staley v. Castleton*.—The principle of this decision was subsequently carried a little further. In *Staley v. Castleton* (*e*), owing to the continuance of the American war, neither the owner of the mill nor any other person could carry it on as a cotton mill; but in *Harter v. Salford Overseers* (*f*), the owner of a silk mill, having given up business, endeavoured unsuccessfully to let it, and meanwhile kept the machinery in it (*g*). It was held that the mill was rateable, but only at its value as a warehouse for the machinery, and not as a working mill; and that the case was undistinguishable from *Staley v. Castleton*. It must, however, be noticed that in that case the continuance of the war prevented the possibility of occupation as a mill, either by the owner or by anybody else, while in *Harter v. Salford* (although the owner himself did not desire to occupy the mill as a working mill) there was nothing to prevent another person from becoming a tenant, and working the mill.

The mill dealt with in *Staley v. Castleton* (*h*) is clearly distinguishable from property (such as a lodging-house at the seaside (*i*) or a racecourse) the occupation of which has little or no value during the greater part of each year. In the case of the cotton mill, no tenant could be found for it as a cotton mill as long as the war lasted. But a tenant for a year might be found to take a racecourse at any time of the year, because, at whatever date the tenancy began, the ensuing twelve months would include the dates of the annual race-meeting. The case, however, is different where the full value of the property can be enjoyed once, and once

(*b*) Cf. *Tyne Coal Co. v. Wallsend Overseers* (1877), 46 L. J. M. C. 185; 41 J. P. 375, *infra*, p. 389.

(*c*) (1863), 32 L. J. Ex. 230.

(*d*) The succession duty, under 16 & 17 Vict. c. 51.

(*e*) (1864), 33 L. J. M. C. 178.

(*f*) (1865), 34 L. J. M. C. 206.

(*g*) Some part, at least, of the machinery consisted of mere chattels, and did not form part of the rateable hereditament.

(*h*) (1864), 33 L. J. M. C. 178.

(*i*) See *Gage v. Wren*, [1903] 67 J. P. 32, *supra*, p. 12.

only. Thus a gravel-pit which has been taken for a year ceases to be rateable as a gravel-pit, if the gravel be exhausted in the first six months' working (*k*).

Tenant from year to year with a prospect of a continuing tenancy.—There is an apparent, but not real, conflict between the rule that rateable value is measured by the rent given by a hypothetical tenant from year to year (not by a tenant for a term of years) and cases which decide that the hypothetical tenant must be assumed to have a reasonable expectation that his tenancy will last for more than a year.

In rating gasworks, waterworks, or railways, it would be impossible to suppose that anybody would become a tenant, if it were *certain* that his tenancy would last only a year (*l*). No tenant, under such conditions, would purchase all the necessary rolling-stock and other materials necessary for working a railway. The words of the Parochial Assessments Act, 1836, not being strictly applicable to such property, it has been held that "they must have some reasonable *cy-près* intendment given to them"; and that it must be assumed that the tenant, though he might not have a greater interest in the tenement than that of a tenant from year to year, would make his calculation on the supposition of a longer duration of tenancy (*m*). "A tenant from year to year is to be considered as a tenant capable of enjoying the property for an indefinite time, having a tenancy which it is expected will continue for more than a year, but which is liable to be put an end to by notice" (*n*). The effect of the rule is that no deduction must be made from the annual value on the ground that the tenant would be deterred from taking the hereditament by the fear of being disturbed (*o*).

The rule above stated in no way conflicts with the decision in *Staley v. Castleton* (*p*), that the rent which would be given by a tenant for a term of years is not the measure of rateable value. In that case it was suggested that a tenant could be found to take a lease of a cotton mill, in the hope that the war (which rendered

(*k*) *Farnham Flint and Gravel Co. v. Farnham Union*, [1901] 1 K. B. 272; Ryde and Konstan's Rat. App. (1894—1904), 217, *infra*, p. 403.

(*l*) Compare *R. v. West Middlesex Waterworks* (1859), 1 E. & E. 716, at p. 722.

(*m*) *Per SHEE, J. : Great Eastern Rail. Co. v. Haughley* (1866), L. R. 1 Q. B. 666, at p. 685. See also *ibid.*, p. 679.

(*n*) *Per Lord ESHER, M.R., in R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359, at p. 370. It may be doubted whether the rule was not misapplied in that particular case to a hypothetical yearly tenant who might be expected to give a rent in the hope that his tenancy would continue for more than a year, and that the circumstances affecting the value of the hereditament would change for the better. The rule, thus applied, seems to be in conflict with *Staley v. Castleton* (1864), 33 L. J. M. C. 178, *supra*, p. 160.

(*o*) The rule was applied to a country mansion in *Clive v. Overseers of Foy* (1875), 39 J. P. 774.

(*p*) (1864), 33 L. J. M. C. 178, *supra*, p. 160.

it useless as a mill) would come to an end: the rent which such a tenant would give was held not to be the measure. But it is quite consistent to reject, as a measure of value, the rent which would be given *in the hope that existing conditions would come to an end*, and at the same time to accept, as a measure of value, the rent which a yearly tenant would give, in the expectation that his tenancy would last for more than a year, and *in the hope that existing conditions would continue*. And, as we have seen, the true principle is to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that those circumstances are about to undergo a change (q).

Effect of a strike on rateable value of factories.—In *Hoyle and Jackson v. Oldham Union* (r), the appellants were forty-three persons, firms, or companies, occupying fifty-eight mills (separately valued in the valuation list), in all of which a general strike (s) occurred on November 5th, 1892, which lasted until March 27th, 1893. The rate was made on November 7th, 1892, and notice of objection to the valuation list was duly given (t); but the objection was not heard until June 12th, 1893, after the strike was over. The appellants contended that their mills ought to be rated at their value as warehouses for storing machinery, and not as working concerns, and they relied on *Staley v. Castleton* (u). The respondents contended that the assessment must be based upon the yearly letting to a tenant from year to year, and not upon the basis of the variable letting values during several portions of a year. The Court of Appeal held that the mills must be assessed at their full value, because it was impossible for the assessment committee to estimate the probability that the strike (which had lasted two days when the rate was made) would last long enough to affect the views of the hypothetical tenant, and that *Staley v. Castleton* had nothing to do with the facts of the case.

The decision above stated may some day have to be reconsidered. Of course, if it be true as a fact that the existence of a strike would not affect the views of an intending tenant in considering what rent he would give for a mill, it follows as a matter of law that the rateable value cannot be reduced because of the strike. But it is submitted that the impossibility of estimating how long

(q) *R. v. Fletton* (1861), 30 L. J. M. C. 89, at p. 95, *supra*, p. 159.

(r) [1894] 2 Q. B. 372; Ryde and Konstan's Rat. App. (1894—1904), 124.

(s) The number of mills and firms (or companies) affected by the strike (as stated in the text) is taken from the special case. The fact that more firms than one were affected by the strike is not disclosed in the Law Reports.

(t) Under s. 1 of the Union Assessment Committee Amendment Act, 1864, set out in Appendix II.

(u) (1864), 33 L. J. M. C. 178, *supra*, p. 160.

the strike will last is no reason for excluding the strike from consideration altogether. No doubt every tenant of a mill, in fixing his rent, would take into account the risk of a strike; but it does not follow that he will give the same rent after a strike has begun, as he would give before the risk had become a certainty. It may be that the appellants in *Hoyle and Jackson v. Oldham Union* (x) were wrong *on the facts* in contending that their mill was worth only its value as a warehouse for storing machinery, but it is submitted that the respondents may have been equally wrong in contending that, *as a matter of law*, the existence of the strike must be ignored.

Rent, not profit, is the measure of rateable value.—On no part of the law of rating has there been more confusion than in dealing with the questions whether profits affect—and in what way they affect—rateable value. Great part of the difficulty will disappear if it be remembered that the ascertainment of rateable value depends upon the construction of a statutory definition, and that the precise words of that definition must be the sole criterion.

The definitions of “net annual value” in s. 1 of the Parochial Assessments Act, 1836, and of “rateable value” in s. 4 of the Valuation (Metropolis) Act, 1869, make the rent which may reasonably be expected the measure of rateable value. In neither section does the word “profit” appear. We have seen already that a hereditament may have a large rateable value, even though no profit is—or can be—made out of the occupation (y); if a tenant will give a rent, rateable value exists, whether profit be made or not.

But rateable value is not in every case unaffected by the existence, or non-existence, of profit arising out of the occupation. If a public body have to perform a public duty, that fact may furnish a motive for payment of rent, though no profit be possible. “The Act does not deal with the object or motive of the tenant; it only asks whether there is a reasonable expectation of finding a tenant, who will take the premises from any motive” (z). But if the motive or object of the tenant, who is most likely to take the premises, is to make a profit, the amount of profit which he is likely to make *may* very materially affect the rent which the tenant will be willing to give. “It is a mistake to suppose that valuation by rental is a process dissociated from the idea of profit. In the case of a tramway, the questions whether a hypothetical tenant could be found, and what rent he might reasonably

(x) [1894] 2 Q. B. 372: Ryde and Konstan’s Rat. App. (1894—1904), 124.

(y) *Vide supra*, pp. 128, 141.

(z) *Per FRY, L.J.*: *R. v. School Board for London* (1886), Ryde’s Rat. App. (1886—1890), 235, at p. 240.

be expected to give if he were found, cannot be easily solved, if at all, except by estimating what amount of profit the line had yielded in the past, and was likely to yield in the future. An intending lessee, whether real or hypothetical, would hesitate to pay a rate which was not based upon these data" (a). Speaking generally, if the profits depend upon the personal skill of the tenant, and can be made in any other premises, quite as well as in the premises in question, then the expected amount of the profits will not affect the rent that tenant will give. But if the profits can be earned only on the premises to be rated, and can be earned there by any ordinary tenant, then the expected amount of the profits will affect, and affect very materially, the rent which a tenant will be willing to give. Whether the profits will affect, and how far they will affect, the rent will depend upon the "higgling of the market" (b). A popular author will not give a larger rent than any other tenant for the room in which he proposes to write a book, for which a publisher has already offered him a large price. But if, by statute, the author's book (when written) might be sold nowhere but at one particular bookstall at Waterloo Station, the rent of that bookstall would undoubtedly rise in consequence.

It is submitted that the true rule is as follows:—As a matter of law, profits must be regarded as affecting rateable value, just so far as those profits would, as a matter of fact, affect the rent which may reasonably be expected. "In ascertaining how much net rent such or such an occupation may be expected to command, parish officers are to consider, not drily and only what would legally pass by a demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy, as to the amount of rent to be asked or given" (c). In *Cartwright v. Sculcoates Union* (d), Lord HALSBURY, L.C., speaking of a public-house, said :

"The problem is to ascertain what a tenant from year to year might reasonably be expected to give as rent. For the solution of that problem . . . all that could reasonably affect the mind of the intending tenant ought to be considered."

Trade profits which enhance the value of land.—As will be seen hereafter (e), when railways were first rated, an attempt was made on behalf of the companies to eliminate altogether from the

(a) *Per* Lord WATSON: *Edinburgh Street Tramways Co. v. Lord Provost, etc.*, of *Edinburgh*, [1894] A. C. 456, at pp. 475, 476.

(b) *Vide per* BLACKBURN, J., in *Talargoch Mining Co. v. St. Asaph* (1868), L. R. 3 Q. B. 478, at p. 486; *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84, at p. 96.

(c) *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at p. 36.

(d) [1899] 1 Q. B. 667, at p. 673; and see the decision of the House of Lords in the same case, [1900] A. C. 150.

(e) See Chapter XIV., *infra*, pp. 189—192.

calculations of rateable value all profits made by the companies by carrying on the trade of carriers. The attempt failed, and it was held that, both before and since the Parochial Assessments Act, 1836 (which it was held made no difference), it would be necessary to take into account the trade profits. In *R. v. London and South Western Rail. Co.* (*f*), Lord DENMAN, C.J., pointed out that the company were occupying "buildings and lands on an entire line of railway, and carrying on a trade not merely therein and thereon, but thereby; a trade inseparably connected with such buildings and such lands; a trade that could have no existence without the buildings and lands, and but for which the buildings would not have been erected or occupied, and for the sake of which, in great measure, the lands themselves were occupied in a particular manner": and added (*g*):

"If we wish to know whether the fares would have been properly included in a rate before the [Parochial] Assessment Act passed, the only question to be asked would be, do they increase actually the value of the buildings and lands on which the rate is to be made? If they do, and to whatever extent they do, to that extent, due allowances always being supposed, they must directly or indirectly be included (*h*). . . . A higher rent might be obtained in consequence of the facility afforded by the occupation to the carrying on of a lucrative trade."

And in *R. v. Grand Junction Rail. Co.* (*i*), Lord DENMAN, C.J., after pointing out that the profits of trade, as such, cannot be rated, added:

"But if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded merely because it is referable to the trade. Suppose a house occupied by a private family to-day, which, having great advantages of situation for the purposes of trade, is turned into a shop to-morrow, and in consequence lets for double or treble the former rent; would not the rate be properly increased in proportion? Could it be objected that to do so was to rate the profits of trade? . . . There is a fallacy in confounding that *which the lease conveys a title to*, and that *which it gives the lessee the means of doing or enjoying*. No two things can be more distinguishable, and it is the latter which regulates the rent a tenant will give and not the former."

This passage alludes to a fallacy, which is to be found in some of the earlier cases relating to the rating of tolls (*k*), viz., that nothing which is not part of the land, or which does not issue out of the land, can be taken into account in estimating the value of the land. That this cannot be true may be seen by considering such property as a house by the seaside, or at Henley, where the

(*f*) (1842), 1 Q. B. 558, at p. 580.

(*g*) 1 Q. B., at p. 584.

(*h*) See also the passage cited from the judgment in *R. v. Grand Junction Rail. Co.*, *supra*, p. 165.

(*i*) (1844), 4 Q. B. 18, at pp. 38, 40.

(*k*) See, for example, *R. v. Coke* (1826), 5 B. & C. 797, cited in Chapter XVI.

proximity of the sea, or the continued popularity of a regatta, must inevitably affect the annual value.

In *Mersey Docks v. Birkenhead* (*l*), the Dock Board were owners of lairages (for the reception and slaughter of foreign cattle), which were the only places in the neighbourhood where foreign animals could legally be landed. The profits received by the Dock Board warranted a higher rateable value than would have been fixed with reference merely to the structural value of the buildings and the value of the land. It was held by the Court of Appeal that evidence of the profits was rightly admitted, and that the capacity in the hereditament itself of making a profit, not personal to the tenant, must be taken into account in estimating the hypothetical tenant's rent.

This decision was confirmed by the House of Lords, in somewhat wider terms. Lord HALSBURY, L.C., referring to the definition of "net annual value" in the Parochial Assessments Act, 1836, said (*m*) :

"The thing that the legislature has called upon the overseers to do is to solve a simple question of fact, although it may be by no means simple as regards the mode in which they are to arrive at it. . . . They are to arrive at that value, so far as I know, unfettered by any statute as to the way in which they can do it. I am not aware of any rule of law or any statute which has limited them as to the mode in which they shall arrive at it. It is not a question of law at all; it is a question of fact. These questions have from time to time come before the courts, and have been argued as questions of law; but that is where, instead of doing what the statute has directed them to do, the overseers, or those who were acting on the part of the parish, have thought proper either to include something which by law ought not to be included, or to exclude something which ought to have been included. Of course in that sense, when you are dealing with a question of fact which has to be answered by any tribunal, it may be that a question may come up in the argument as a matter of law; but still one must bear in mind that the thing to be done is to answer a plain question of fact, namely, what is the rent which a tenant might reasonably be expected to give for the premises, subject to the deductions mentioned in the statute, as a tenant from year to year? Now, the first part of the proposition is that you are to rate—what? Not the tenant's trade. . . . The trade is excluded from valuation by the terms of the statute. You are to rate the premises according to their value; therefore it would be very wrong indeed to rate the trade, or to treat it as you would if you were dealing with the question for the income tax. You are not rating the income: you are rating the premises; so that, where you have premises of a similar character with equal facilities for carrying on trade, you have a very facile mode of coming to the conclusion what sum would reasonably be given by any tenant from year to year for such premises. . . . To go into the amounts of profits and losses, as if you were finding out what a man's income is, would be absolutely irrelevant; but, for the purpose of ascertaining what a tenant would be likely to give, to suggest that that is something which in point of law you have no right to inquire into would be equally absurd. All the circumstances of the particular occupation; the mode in which the trade is being

(*l*) [1900] 1 Q. B. 143; affirmed by the House of Lords, [1901] A. C. 175.

(*m*) [1901] A. C., at pp. 179, 180.

carried on, and the circumstances affecting either the restriction or the amplitude of the trade, are all legitimate subjects of inquiry, and the only question of law is whether the particular tribunal has followed the line I have indicated or not."

The question of fact to be answered was then, Would the Mersey Dock Board give more rent for the lairages on account of the profits earned thereon? Now as the lairages were the only places in the neighbourhood where cattle could legally be landed, being appointed for that purpose by the Board of Agriculture, the Dock Board could not transfer their business and earn the same profits elsewhere, and the hypothetical landlord and the Dock Board (if they were tenants) would take this fact into account in fixing the rent. The Dock Board were in a position analogous to that of a tenant of a licensed public-house, who generally gives an additional rent because he can there carry on a business which he cannot carry on elsewhere; and for that additional rent he is rateable.

The profits of a particular trader are not always the measure of value.—The facility for making trade profits, which is given by a particular hereditament, enhances the value of the hereditament. "The annual rent of a shop in Cheapside is higher than the annual rent of a similar shop in a back street; and the reason why tenants give a higher rent is because of the superior facility for carrying on business there. But the rent and rateable value are quite independent of the amount of the shopkeeper's actual gains" (*n*). This subject was fully considered in *R. v. London and North Western Rail. Co. (o)*, in which BLACKBURN, J., said:

"In letting a thing from year to year, the rent would be regulated by two matters: on the one hand, by the benefit the tenant would be likely to derive from the occupation, because he would not give more than that; on the other hand, by the nature of the property, such as its local situation, or how many persons there are who could supply him with an equally eligible thing, and be willing to let it to him; for while he would not be willing to give more than he expected to make by it, he would not even give that, if he could get a similar thing at a lower rent. In the case in which we gave judgment the other day (*p*), we instanced the case of chambers in one of the Inns of Court. They are let at a higher rent than they would fetch elsewhere, because they give facilities to gentlemen to carry on the profession of barristers. And if the Attorney-General could only get one set of chambers to carry on his business, he would give probably an enormous rent for them; but it so happens that there are a great many sets of chambers, and the rent the Attorney-General gives, is just the same as that given for a similar set by a gentleman only called yesterday."

(*n*) *Per* BLACKBURN, J.: *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84, at p. 97.

(*o*) (1874), L. R. 9 Q. B. 134, at p. 144.

(*p*) *Mersey Docks v. Liverpool* (1873) L. R. 9 Q. B. 84.

Here it is plain that BLACKBURN, J., considered that, if the Attorney-General were able to get only one set of chambers, and, therefore, gave an enormous rent for them, the rateable value of those chambers would rise in proportion. The landlord, knowing that the Attorney-General must either take his chambers or cease to be Attorney-General, would ask a very high rent, and it could not reasonably be expected that the tenant would refuse to give it. And the illustration suggests the true rule, viz., that where the (hypothetical or real) landlord possesses a monopoly, or quasi-monopoly, the profits which the tenant expects to make by his occupation will affect the letting value, that is the rateable value, of the land. Whether the landlord will get as rent the last farthing which the tenant can afford to pay will depend on two things: (1) whether the tenant is the *only* person who can earn the profits which he is likely to make; and (2) whether the hereditament is the *only* hereditament on which those profits can be earned, in other words, whether the landlord's monopoly is complete or not. If the landlord knows that one tenant, and one only, can just afford to pay a rent of 1,000*l.* a year, and that every other possible tenant can afford to pay only 500*l.* a year, he will probably not insist on the full rent of 1,000*l.* from the former tenant, for fear of losing that tenant altogether, and the precise amount of the rent will be fixed by the "higgling of the market." If there are other premises, though only a limited number of other premises, where the tenant can carry on his business, the profits which ordinary tenants can make, and not the profits which one particular tenant can make, will determine the rent which will be given in the house market.

Premises to which a monopoly is attached.—It is sometimes said that where the rateable hereditament has a monopoly attached to it, the trade profits which the particular tenant makes not only may, but must necessarily, be taken into account, as is done in the case of railways, gasworks, a racecourse (*q*), and (in some instances) in the case of premises licensed for the sale of intoxicating liquors (*r*). But this is not the true view. The problem is to ascertain what rent may be expected from a yearly tenant of the particular hereditament. If the actual occupier is a yearly tenant, at a rent recently fixed, under ordinary circumstances of supply and demand, then (*primâ facie* at all events) the facts supply the answer to the problem. If the particular hereditament is not so let, but there are other similar hereditaments which are so let, and with which the particular hereditament can be compared, if that comparison affords a sufficiently accurate criterion of the rent which may be

(*q*) See *R. v. Verrall* (1875), 1 Q. B. D. 9, *infra*, p. 170.

(*r*) See *Clark v. Alderbury Union* (1880), 6 Q. B. D. 139, *infra*, p. 171.

expected for the particular hereditament to be rated, the problem can be solved without inquiring into the profits which a particular tenant has made (*s*). A railway is seldom (if ever) let to a yearly tenant; and, if it is not so let, there are no other railways (let to such a tenant) with which any particular line of railway can be usefully compared. Consequently, in order to find out what rent might be expected for a particular line, the only possible method is to ascertain what rent the occupiers of that line could afford, and would be willing, to pay out of the profits of their occupation (*t*). But, even in the case of a railway, if it be once ascertained that the line to be rated is actually let to a tenant, the rent which that tenant pays, rather than the profits which he makes, is to be taken as evidence of rateable value (*u*). The decisions as to licensed premises have been somewhat conflicting: but it has been held (and it may perhaps still be regarded as good law) that if a public-house, which is not let at a yearly rent, can be fairly compared with other public-houses which are so let, evidence of the profits made by the particular tenant is inadmissible (*v*).

When can evidence be given of the occupier's profits?—

In some cases, which must undoubtedly be regarded as more or less exceptional (*y*), evidence may be given not merely of the profits which any tenant may be expected to make, but even of the profits which the particular occupier in fact makes. How far the profits of the particular occupier may be used as evidence of the profits which any occupier may be expected to make will be seen to be a difficult question when we come to deal with the rating of public-houses (*z*). It is perhaps hardly possible to state a general rule with which all the cases can be said to agree; for the present it must suffice to give instances of decisions, from which a general rule may be hereafter deduced, reserving the case of a public-house for separate consideration.

In *R. v. Verrall* (*a*), on an appeal against the assessment of a racecourse and the usual stands connected therewith, the respondents called for the appellants' books, and tendered evidence of the profits made by the appellants. The sessions rejected the evidence and did not allow the books to be produced. The Queen's Bench held that they were wrong, and that the books were clearly elements for the consideration of the justices. In answer to the suggestion that the profits might depend, not on the value of the

(*s*) See *Mercy Docks v. Birkenhead*, [1900] 1 Q. B. 143, at p. 152.

(*t*) The rating of railways is further considered in Chapter XIV.

(*u*) See *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134.

(*v*) *Dodds v. South Shields*, [1895] 2 Q. B. 133; but see also *Cartwright v. Sculptcoates Union*, [1899] 1 Q. B. 667; affirmed in H. L., [1900] A. C. 150: see Chapter XXIV., where the rating of public-houses generally is more fully considered.

(*y*) *Dodds v. South Shields*, [1895] 2 Q. B. 133; *Cartwright v. Sculptcoates Union*, [1900] A. C. 150; Ryde and Konstam's Rat. App. (1894—1904), 167.

(*z*) See Chapter XXIV.

(*a*) (1875), 1 Q. B. D. 9.

premises, but upon the personal skill of the occupier, FIELD, J., said, in the course of the argument, "allowance might be made for the peculiar skill of the occupier."

The decision has been confirmed by the Court of Appeal in *Dodds v. South Shields* (b), in which Lord ESHER, M.R., after deciding that, in ordinary cases, evidence of the occupier's profits cannot be given, said: "The case of a racecourse is an exceptional case (c), and therefore it is necessary to inquire what the tenant of a racecourse, intending to use it as a racecourse, could afford to give, in order to find out what he would be likely to give. A racecourse cannot be put into the same category with inhabited houses."

There has been a decision at quarter sessions which at first sight is inconsistent with *R. v. Verrall* (d). In *Sandown Park v. Epsom Union* (e), the respondents had based the rating of the Sandown Park racecourse on the profits actually made by the occupiers, and in calculating such profits brought into account the club subscriptions. The appellants contended that the profits were due to the personal influence of the occupiers. The racecourse extended into two parishes, and the land in one parish had been recently let to the appellants on lease after the racecourse had been in use for some time. The Surrey quarter sessions, without expressly laying down any principle, reduced the assessment to amounts which were obviously based upon the rent actually paid under the lease. This decision did not really ignore the occupiers' profits, for it was based on a rent which was fixed by persons who (presumably) took those profits into account. The thing to be ascertained is the yearly rent which may reasonably be expected; the actual profits may be evidence of that rent, but cannot be better evidence than a rent recently fixed with the expectation (founded on experience) that those profits will continue to be made.

The decision in *R. v. Verrall* was followed in *Clark v. Alderbury Union and Overseers of Fisherton-Angar* (f), which related to refreshment rooms at Salisbury railway station. The appellant had agreed to pay a rent for the rooms, and he tendered evidence of the trade actually done, to show that he could not afford to pay the agreed rent, which the respondents contended was conclusive evidence of value. The Queen's Bench Division held that the appellant's evidence of trade done was admissible.

(b) [1895] 2 Q. B. 133, at p. 136.

(c) But in *Cartwright v. Scolcoates Union*, [1900] A. C. 150, at p. 159, Ryde and Konstan's Rat. App. (1894—1904), 167, at p. 191, Lord DAVEY repudiated "the distinction between exceptional and ordinary cases."

(d) (1875), 1 Q. B. D. 9.

(e) [1902] May 23rd, not reported; from the writer's MS. notes.

(f) (1880), 6 Q. B. D. 139. Lord ESHER, M.R., is reported to have doubted this case in *Dodds v. South Shields*, [1895] 2 Q. B. 133, at p. 137; but see the judgment of A. L. SMITH, M.R., in *Mersey Docks v. Birkenhead*, [1900] 1 Q. B. 143, at p. 150.

If the refreshment rooms were to let, and a person desirous of becoming a yearly tenant knew two facts, viz., (1) that the rent paid by the previous tenant was 1,000*l.*: and (2) that that tenant had carried on business at a loss, it can hardly be doubted that (in the first instance at all events) he would attach more weight to the latter fact than to the former, in considering what rent he would pay. As FIELD, J., said: "The appellant might of course be cross-examined to show that he might have got his provisions cheaper, and made a larger profit": and an incoming tenant might know that the outgoing tenant's loss was due to bad management; but, until he ascertained that, the loss was at least *primâ facie* evidence of value, and as good evidence as the rent actually paid.

The decisions above cited are quite consistent with *R. v. North Aylesford Union* (*g*), in which it was held that the profits made by the tenants of a chalk-pit, as cement manufacturers, ought not to be taken into account in estimating the rateable value of the chalk-pit. The cement manufacturers could have taken any of the other chalk-pits in the neighbourhood, of which there were several, not used for making cement. The cement manufacturers' profits might have been made at any of those pits, and the landlord had no monopoly. But the trade done at the refreshment rooms at Salisbury station could be done nowhere else: the profits of the tenant, whether small or large, must therefore be an important factor in determining the rent. The tenant could not take his business away from the station to a house in the next street, whereas the cement manufacturer could move his business to another chalk-pit.

Effect of statutory restrictions on profit.—If premises are occupied for the sake of making profit, "any restrictions which the law has imposed upon the profit-earning capacity of those premises must be considered," in estimating the rateable value (*h*). So that, in rating a dock or railway company, the limitation imposed by statute on the tolls which the company can charge must be taken into account, as limiting the rent which the hypothetical tenant would pay. In *Sculcoates Union v. Hull Docks* (*i*), a railway company had under the special Acts the right to run, free of toll, over lines belonging to the dock company: it was held that, in rating the dock company, the statutory prohibition against charging tolls must be taken into account.

The rule that the hypothetical tenant must be supposed to

(*g*) (1872), 37 J. P. 148; reported *sub nom.* *R. v. Aylesford Union*, 26 L. T. 618: see Chapter XXI., *infra*.

(*h*) See *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 592; *Ryde's Rat. App.* (1891—1893), 413, at p. 423.

(*i*) [1895] A. C. 136: p. 240, *infra*, but see also pp. 245, 246, *infra*.

occupy under the same statutory restrictions as the actual tenant was at one time given a wide application. Thus it was held that, in rating waterworks belonging to a municipal corporation, the hypothetical tenant must be supposed to be prohibited from making a profit, in the same way as the actual occupier was prohibited (*k*). But later decisions (*l*) have shown that the property of municipal corporations and other similar public bodies may be rated at substantial sums, notwithstanding an entire absence of profit. And the effect of these decisions is that, where property is not occupied for the sake of profit, but for the discharge of some public duty or for the public benefit, restrictions on the profit-earning capacity of the property need not be taken into account (*m*). The true test of rateable value in such cases is the value to the existing occupier (*n*), and not the rent which any other tenant, unfettered as to user and unrestricted as to charges, would give if the premises were in the market (*o*).

Diversion of profits from occupier to some other person.—If property be valuable, in that it produces a profit, the fact that that profit by private agreement, or even under statutory compulsion, may be diverted from the actual occupier to some other person, is immaterial in considering what is the rateable value.

In the case of property let at a rent, which events prove to be so much too high that no profit is left to the tenant, it is clear that the tenant is rateable (*p*). Here the burden is the result of voluntary agreement between the parties; but, in the case of tithes, no deduction can be claimed for the services of the incumbent, though he is bound to give those services (*q*); nor can a deduction be claimed for the stipend of a curate, though his services are necessary in addition to those of the incumbent (*r*), for “there is a fallacy in confounding the rateable value with the remunerative value to the incumbent.” These questions are further considered in dealing with the rating of tithes (*s*).

In *R. v. Rhymney Rail. Co.* (*t*), the owners of wharves let them to the railway company, but by the agreement certain

(*k*) *Mayor, etc. of Worcester v. Droitwich* (1876), 2 Ex. D. 49: see p. 293, *infra*.

(*l*) *London County Council v. Erith and West Ham*, [1893] A. C. 562; *Mayor, etc. of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197.

(*m*) See pp. 299—301, *infra*.

(*n*) See *R. v. School Board for London* (1886), 17 Q. B. D. 738.

(*o*) See *Overseers of Chorlton-upon-Medlock v. Chorlton Union* (1882), 51 L. J. Q. B. 458, which seems to be (in effect) overruled on this point.

(*p*) *R. v. Parrot* (1794), 5 T. R. 593, *supra*, p. 128.

(*q*) *The Hackney Tithe Case, R. v. Goodchild* (1858), E. B. & E. 1; 27 L. J. M. C. 233, *infra*, Chapter XXIII.

(*r*) *R. v. Sherford* (1867), L. R. 2 Q. B. 503; overruling on this point *R. v. Goodchild*, *supra*.

(*s*) See Chapter XXIII., *infra*. See also the second report of the Royal Commission on Local Taxation (Rating of Tithe Rentcharge), 1899.

(*t*) (1869), L. R. 4 Q. B. 276. The case is further considered *infra*, pp. 248, 249.

wharfage dues were made payable to the owners, and were not receivable by the railway company; it was held that the railway company, being the occupiers of the wharves, were rateable for their full value, including the wharfage dues. The correctness of this decision may be shown thus: if the lease to the railway company had included the right to receive the dues, subject to the payment of a higher rent, it is clear that the railway company would have been rateable for the full value of the wharves, including the dues. Substitute for such a lease, a lease reserving the dues to the lessors, with an exactly proportionate reduction of rent: the reservation of the dues would be in substance a reservation of rent in another form, and the method of paying rent under such a lease could not alter the real value of the premises.

Land subject to a special rate.—The decision in *R. v. Vange* (*u*), though at first sight similar to, is really distinguishable from, the case just referred to, and is (it is submitted) of doubtful authority. In that case, which related to land in Canvey Island, near the mouth of the Thames, commissioners under a special Act were authorised to rate the “owners or occupiers” of certain lands to the full annual value (if necessary) for the expense of maintaining sea walls, and if the sums so raised were insufficient, then to rate other lands in the island. It was held that in rating a person, who was both owner and occupier of lands of the former class, no deduction should be made from the rack rent for the amount of the rates levied by the commissioners which were equal to the rental value. Apart from the question whether this decision must be taken to be overruled by later cases above cited (*x*), it is submitted that the judgment of Lord DENMAN cannot be supported as it stands. It refers to *Governors of Bristol Poor v. Wait* (*y*), as showing that an occupation may be beneficial without being profitable. This no doubt is true, but in the case referred to the Governors of the Poor had a public duty to perform which supplied a motive to induce them to occupy, though they could make no profit; this fact at once distinguishes the case from *R. v. Vange*. Again, Lord DENMAN refers to *R. v. Parrot* (*z*), as showing that a losing occupation may be rateable. But in that case the judgment was based upon the view that there was no loss, unless the rent was deducted, and it merely decided that property remains rateable even if the profits are all swallowed up in the rent. In *R. v. Vange* the judgment appears to ignore the fact that the rate might be made upon the “owners or occupiers.” If it was open to the commissioners at their discretion to rate the occupiers, and if the

(*u*) (1842), 3 Q. B. 242.

(*y*) (1836), 5 A. & E. 1, *supra*, p. 132.

(*z*) (1794), 5 T. R. 593, *supra*, p. 128.

(*x*) See p. 157, note (*z*).

latter had no right under the local Act to deduct the rate from the rent, it seems impossible to believe that any tenant would undertake to pay a rent equal to the full value of the occupation, without making allowance for his liability to pay to the commissioners a sum equal to the rent. If it be suggested that the tenant under the agreement of tenancy would stipulate for the right to deduct the rate from the rent, the answer is that a tenant with the benefit of such an agreement is not in the position of the hypothetical yearly tenant supposed by s. 1 of the Parochial Assessments Act, 1836, and therefore the rent which a tenant with such a special agreement would pay is not the measure of rateable value. If the rate were a charge upon the owner only, and not upon the occupier, and merely formed the consideration (or part of the consideration) given to acquire the property, then possibly it could not be deducted (*a*); but the rate was paid and expended (in part at least) to ensure the existence of the hereditament in a state to command a rent. So that while the full rent, including the sum which would have to be paid away to the commissioners, might be the measure of the gross value, the sum paid away should be deducted in order to arrive at the rateable value (*b*).

Rent cannot be deducted from profits.—A mistake is sometimes made in claiming to deduct from the profits made by the occupation the rent actually paid by the occupier as a working expense (*c*). But where the rateable value of a hereditament is calculated from the profits made by the occupation, the object of the calculation is to ascertain what rent a tenant who made those profits would be willing and able to pay for the right to make them. From this point of view rent represents that part of the profits which a tenant would undertake to pay to his landlord in order to secure the remainder of the profits for himself. In trying to find out what is likely to be the landlord's share of the profits, it cannot be right to deduct from the profits the sum which happens to represent the landlord's share under the contract for the moment in force. Such a deduction involves the absurd results that the greater the rent actually paid, the less will be the rateable value, and where two hereditaments produce equal profits, and one is let to a tenant at a rent, while the other is in the hands of the owner, who pays none, the rateable value of the former is less than that of the latter.

Interest on cost as a measure of value.—Where property is of a kind that is never let from year to year, recourse is sometimes

(*a*) Compare *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276, *supra*, p. 173; *R. v. Woking* (1835), 4 A. & E. 40, *infra*, p. 344.

(*b*) Compare *Pullen v. St. Saviour's Union*, [1900] 1 Q. B. 138, *supra*, p. 157.

(*c*) Such a deduction was disallowed in *London and India Docks v. Poplar Union*, [1900] 64 J. P. 820; 83 L. T. 371. But see also p. 409, *infra*.

had to interest on capital value, or on the actual cost, of land and buildings, as a guide to the ascertainment of annual value. There is some apparent, if not real, conflict of decisions upon the question whether interest on capital value, or on cost, may be considered at all; but great part, if not the whole, of the difficulty will disappear if the rule be thus stated: the measure of rateable value is defined by statute as the rent which may reasonably be expected; interest on cost, or on capital value, cannot be substituted for the statutory measure, but can be looked at as *primâ facie* evidence in order to answer the question of fact what rent a tenant may reasonably be expected to pay (*d*). The rule was thus stated by CAVE, J., in *R. v. School Board for London* (*e*):

“Interest on cost is a rough test undoubtedly. It is a test in some cases, but it is not a test in others. If the place is occupied by a tenant (*f*), it is not a good test at all, because the rent which he actually pays is a far better one. If the place is unlet, it is not at all a good test, because it may be that no tenant would give anything approaching to the interest on the cost. But if the place is occupied by the owner himself, then it is in some sense a test, a rough test no doubt, and only *primâ facie* evidence, but still some evidence, to show what the value of the occupation is. . . . If he could get a place cheaper, at a less rent than the interest on the cost comes to, it is to be assumed he would not go to the expense of building, he would prefer to take the cheaper course and pay the rent.”

In *R. v. Chaplin* (*g*), decided before the passing of the Parochial Assessments Act, 1836, a canal was let to a lessee who paid no rent (as such), but paid the interest on a mortgage debt created by the lessors; it was held that the payment of interest was in effect a rent, and was the best measure of value.

Structural value and actual cost distinguished.—It is important to distinguish between value and actual cost. “The outlay of capital may furnish no criterion of the rent, since it may have been injudiciously expended, and what was costly may have become worthless by subsequent changes” (*h*). If a house is built at a cost of 10,000*l.*, when it could have been erected for 5,000*l.*, the latter, and not the former sum, is the basis upon which calculations must be based. Litigation respecting the title to land (though it may materially add to the cost) does not add to the letting value, nor is it in any way necessary to making it up (*i*). But there is a distinction between expenditure which is unforeseen and, as it were, accidental, and expenditure which is deliberately

(*d*) *Overseers of Chorlton-upon-Medlock v. Chorlton Union* (1882), 51 L. J. Q. B. 458; *Mayor, etc. of Liverpool v. Llanfyllin Union*, [1899] 2 Q. B. 14, *infra*, p. 177; *Mercy Docks v. Birkenhead*, [1900] 1 Q. B. 143; [1901] A. C. 175, *supra*, p. 167.

(*e*) (1885), 55 L. J. M. C. 33, at pp. 37, 38.

(*f*) An ordinary yearly tenant, not a tenant under a lease, is apparently meant.

(*g*) (1831), 1 B. & Ad. 926.

(*h*) *R. v. Mile End, Old Town* (1847), 10 Q. B. 208, at p. 218.

(*i*) *Cf. R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 205.

undertaken and is inevitable. If, in the course of building a row of exactly similar houses, it is discovered that the sub-soil of one house is of such character as to require more costly foundations, that fact will have no effect on the rateable value ; for no tenant would give a higher rent for one house than for any of the others exactly like it merely because it has cost more to build. On the other hand, if an owner buys land and builds a house thereon for his own occupation, knowing from the first that it will be necessary to spend a large sum of money in sinking an unusually deep well, the expenditure on the well cannot be struck out of consideration altogether, because in other places a less costly well would have sufficed. The expenditure on the well is at least evidence that the owner thought it worth while to make it, and expected to get a return for his money. Moreover, the owner, in buying the land, may have given a lower price because he foresaw that he would have to spend money on a deep well. In such a case it cannot be right to base the calculations of annual value on the reduced price paid for the land, and at the same time to eliminate from consideration the cost of the well which occasioned the reduction in price.

An illustration of the principle above stated is to be found in *Liverpool Corporation v. Llanfyllin Union* (*k*), which related to the Vyrnwy reservoir and works connected therewith. The Corporation of Liverpool, in order to supply Liverpool with water, constructed a reservoir under a special Act, the execution of the works necessarily involving the submersion of a parish school, church, and vicarage. By the special Act the corporation were required to make certain new roads and bridges in substitution for roads diverted or stopped up, and to provide sites for and build a new school, church, and vicarage, in substitution for those that were destroyed. Both sides agreed, on the hearing of the appeal against the assessment on the reservoir, dam, and other works, that interest on structural value must be made the basis for calculating rateable value ; but it was disputed (*inter alia*) whether the expenditure on the roads and bridges and the new church, vicarage, and school (*l*), were to be brought into account as part of the capital value on which the percentage was to be calculated. The sessions decided that all the expenditure in question ought to be included as part of the capital expenditure, and the Court of Appeal (reversing the decision of the Queen's Bench Division) held that there was nothing wrong in law in that decision. A. L. SMITH, L.J., said (*m*) :

(*k*) [1899] 2 Q. B. 14. See also *New River Co. v. Hertford Union*, [1902] 2 K. B. 597, *infra*, p. 269.

(*l*) It will be noticed that none of these objects of expenditure formed part of the rateable hereditament of which the corporation were occupiers.

(*m*) [1899] 2 Q. B., at pp. 20—22.

"In a case like the present, where no profits are earned in the parish by the use of the hereditament, a rough way of arriving at the rateable value by rule of thumb, there being no other way available, is to see what the site and the construction of the works cost, and take a percentage on the capital amount so expended as representing the rent which a tenant would give. . . . If a person buys a piece of land, and spends so much in erecting a building upon it, the amount so expended by him forms some criterion of the rent which he would give, if he had to rent the hereditament so created (*n*). I agree that a certain rate of interest on the capital expended in creating the hereditament is by no means to be taken as necessarily equivalent to the rent which a hypothetical tenant would give; but I think the amount of capital expended is admissible in evidence as a criterion by which to estimate that rent in the case of works like these which are incapable of being compared with other hereditaments which form the subject of letting. . . . The corporation must be taken into consideration as possible tenants of the works. They could not construct the works which they desire to construct, as necessary for the purposes of the water supply to their city, without coming under the obligation to provide a new church, vicarage and schools, in lieu of paying a pecuniary compensation for those which would be destroyed by the works. I cannot see why, as a matter of law, that expenditure was not properly taken into account by the sessions in arriving at the rateable value. . . . The same considerations appear to me to apply to the amount expended in providing roads and bridges as to that expended on the new church, vicarage, and schools."

The expenditure dealt with in this judgment was, in a sense, unproductive, because it was laid out upon things which did not form part or increase the efficiency of the rateable hereditament itself. But if the expenditure was foreseen and was voluntarily incurred (either to avoid a still greater expenditure which the adoption of another site would have involved or to insure a better water supply), it was not altogether unproductive of value to the corporation. At all events, the expenditure is in an entirely different category from capital "injudiciously expended" or capital laid out on that which was once valuable, but has become worthless by subsequent changes (*o*).

University and college buildings.—There have been one or two cases at quarter sessions dealing with the rating of buildings occupied by Oxford University and the colleges, and by public schools. In the *Oxford University Case* (*p*) the appeal related to (*inter alia*) the Bodleian Library, the Sheldonian Theatre, the Radcliffe Camera, the New Schools, and the University Museum and Galleries. Such buildings are, of course, never let to a tenant, and therefore it was impossible to rely on rents actually paid. Again, many of the buildings were built out of money

(*n*) Cf. *Mersey Docks v. Birkenhead*, [1900] 1 Q. B. 143, at p. 148.

(*o*) See the judgment of Lord DENMAN, C.J., in *R. v. Mile End, Old Town* (1847), 10 Q. B. 208, at p. 218, *supra*, p. 176.

(*p*) [1902] before the Hon. A. LITTLETON, K.C., the Recorder. The case is reported in Ryde and Konstam's *Rat. App.* (1894—1904).

given or bequeathed by benefactors whose aim was either to benefit the university, or to create a lasting memorial of their own names. In such cases, although the buildings were more or less useful to the university, yet the university was under no obligation to provide such costly buildings, nor did it spend its own money in acquiring them, and thereby forego the interest on that money in order to obtain them. These facts rendered inapplicable interest on structural value, which is often taken as a measure of rateable value in the case of buildings belonging to a school board, a municipal corporation, or a county council (*q*). In the latter cases the occupiers have a public duty to perform, and in order to discharge that duty are driven to borrow and spend money in acquiring buildings; and hence a presumption arises that they would be willing to pay a rent bearing some relation to the interest on the cost. No such presumption arose with regard to many of the university buildings. The method of valuation sanctioned by the recorder was as follows: to eliminate all that was of a merely monumental or memorial character; subject to this elimination, to estimate the cost of a building giving equal accommodation and equally suitable for the purposes for which it is now used, with sufficient ornamentation to make it suitable for the requirements and dignity of a university; and to take 3 per cent. on the capital value of such a building as the rateable value to be ascertained. A similar method was adopted in dealing with the buildings belonging to the colleges, with the exception of the chapels, which are referred to below.

A somewhat similar method was adopted by the Surrey Quarter Sessions in dealing with Epsom College (*r*), save that the court there took 4 per cent. on the estimated structural value of an equally suitable building, and added thereto 1 per cent. for the estimated cost of repairs, etc., to arrive at the gross estimated rental; from which they deducted the average *actual* cost of repairs, etc., which was taken at a sum which happened to be equal to nearly 2 per cent., so that in the result a sum of about 3 per cent. on the structural value of an equally suitable building was taken as rateable value (*s*).

Both in the case of the Oxford Colleges, and of Epsom College, a sum far below 3 per cent. on structural value was taken as the rateable value of the chapels; in fact the rateable value of Magdalen College Chapel was put at 200*l.*, a sum which was

(*q*) See *R. v. School Board for London* (1885), 55 L. J. M. C. 33, *supra*, p. 176; *Liverpool Corporation v. Llanfyllin Union*, [1899] 2 Q. B. 14, *supra*, p. 177; *London County Council v. Erith and West Ham*, [1893] A. C. 562, *infra*, p. 184.

(*r*) *Royal Medical Benevolent College v. Epsom Union* (1902), reported in Ryde and Konstam's Rat. App. (1894—1904).

(*s*) The method of calculation was somewhat unusual, in that it added to 4 per cent. on structural value the estimated cost of repairs, etc., of the substituted hypothetical building, and deducted from the gross value thus arrived at the repairs, etc., of the existing building.

merely nominal, if measured by percentage on structural value (*t*). The chapels were probably not exempt from rating, not being occupied for *public* religious worship (*u*).

In *Christ's Hospital v. Horsham Union* (*x*), the Sussex Quarter Sessions, in dealing with the new school buildings at Horsham, gave no indication of the method they adopted, but fixed the assessment at a sum far below 3 per cent. on actual outlay; possibly on the ground that some of the buildings were of a monumental or memorial character, or (as was suggested by the appellants) that some of the outlay was unnecessary and extravagant.

Present value, or original value, of machinery and plant.—

Where interest on structural value is taken as evidence of the rateable value of machinery and plant (forming part of the rateable hereditament) which will soon require to be renewed, there is a difficulty in deciding whether the interest is to be calculated on the structural value of the machinery when new, or the value for which it could be bought or sold at the date of the rate.

We have already seen that the rateable value of property must be determined by what it is at the present time, not by what it once was, or by what it may hereafter become (*y*). At first sight this seems a strong reason for saying that in valuing machinery, the value of the machinery when new must not be taken as the sum on which interest is to be calculated. But there is a fallacy underlying this contention. Rateable value is the present value for purposes of letting, not for purposes of sale: and the problem is to find out for what rent the premises would let to a tenant from year to year, not to a tenant for a term of years (*z*). Interest on capital value (whatever value be taken) is merely to be used as evidence of the rent for which the premises would let, and is not to be substituted for that rent as the measure of rateable value.

In the following remarks as to the proper method of valuing machinery, the selling value of which is depreciated because it is old, two elements of value have been purposely left out of consideration, viz., (1) the fact that the machinery may have been rendered obsolete by modern inventions; and (2) the fact that, by reason of its age, the machinery may be more costly to work (*e.g.*, that it consumes more coal). If either of these facts be proved to exist, it will diminish the rent and the rateable value. But let us take the case of machinery which is old, and therefore

(*t*) In the case of the Christ's Hospital Chapel at Horsham, both sides agreed that interest on structural value was not the measure of value. They differed as to the amount, and the sessions did not definitely decide the question.

(*u*) *Vide supra*, p. 109.

(*x*) July 4th, 1903; not reported; from the writer's MS. notes.

(*y*) *Per LUSH, J.*: *Metropolitan Board of Works v. West Ham* (1870), L. R. 6 Q. B. 193, at p. 198, *supra*, p. 159.

(*z*) See *Staley v. Custleton* (1864), 33 L. J. M. C. 178, *supra*, p. 160.

will sell for less than if it were new, but which still for the time being does its work as efficiently as when it was new (*a*), and see the effect which the age would have on the rent or rateable value.

Suppose machinery were newly erected at a cost of 1,000*l.*, and that it will last exactly forty years, and at the end of that time will be worth say 50*l.* as old iron, and must be renewed. If the gross value is taken at $7\frac{1}{2}$ per cent., and the rateable value at 5 per cent. on the selling value of the machinery in each succeeding year (*b*), the value would gradually fall from 75*l.* gross and 50*l.* rateable in the first year to next to nothing in the fortieth : in the fifth year for example, the machinery (being second-hand) would probably sell for substantially less than when it was new. But will this affect the rent which the tenant from year to year would give, if it be assumed that the machinery, though second-hand, does its work as well as when new ? Under the Parochial Assessments Act, 1836, one must assume a tenant from year to year, and from his rent must be deducted the probable average annual cost of repairs, renewals, etc., which are assumed to be done by the landlord ; and if such a tenant actually took the machinery in question, and continued in occupation for the whole life of the machinery, it is difficult to see why he should be willing to pay more, when the machinery was new, or the landlord should be willing to accept a gradually diminishing rent as the machinery grew old, provided, of course, the machinery did its work efficiently. Under the statutory hypothesis, the average cost of repairs and renewals falls on the landlord, and must be paid out of the gross rent, and (if efficiency be maintained) the tenant is not affected by the amount of the landlord's expenses.

This view involves an apparent anomaly in the case of an owner occupying his own premises, viz., that he is rated at the same sum when the machinery is nearly worn out, as when it was new. But in this case, the ratepayer fills two capacities, that of landlord and tenant, which for the purposes of rating must be assumed to be filled by two distinct persons : assuming the original efficiency of the machinery to be maintained, the tenant will be willing to give the same rent as before, and it will make no difference to him if in a very short time the landlord must spend several years' rent in renewing the machinery. That burden, under the statutory hypothesis, is cast upon the landlord. No doubt the *selling* value of the landlord's property has been diminished, but the question is not what the property will sell for, but at what rent it will let.

(*a*) The ropes of a lift, which must be renewed periodically to ensure the safety of the passengers, may be given as an example. They probably do their work as well just before they are renewed as when they were first new.

(*b*) The cost of fixing the machinery *in situ* must of course be taken into account as part of the original cost, and would be lost if the machinery were removed elsewhere ; but to simplify the question, the cost of fixing may be assumed to be inappreciable.

Again, it must be borne in mind, that throughout the life of the machinery, a deduction is made every year from the gross rental for the probable *average* annual cost of repairs and renewals in order to arrive at the rateable value (*c*): when the machinery is nearly new the annual allowance is probably higher—when the machinery is old, the allowance is probably less—than the actual cost in the year. It would be obviously unfair to deduct the average cost when little or no actual expense was incurred, and then to claim a further deduction when the actual expenses were above the average.

It must specially be noticed that the foregoing remarks as to the value of machinery apply only to such machinery as is rateable. In dealing with railways, gasworks, and other property, the rateable value of which is calculated from the profits made by the undertaking, the deduction to be made from the net profits in respect of the value of those machines, which are of a chattel character, and are regarded as the property of the tenant and not part of the rateable hereditament, must be calculated with reference to the present depreciated value of the machinery at the date of the rate, and not with reference to its prime cost (*d*). Machinery which is not part of the rateable hereditament is supposed to be provided by, and at the expense of, the hypothetical tenant: and, if depreciated and second-hand machinery will serve his purpose, he cannot be supposed to fix his rent on the hypothesis that he will have to provide new machinery.

The contractor's test.—In some cases, and most frequently in valuing the indirectly productive portions of gasworks, or waterworks (*e*), the courts have taken as the measure of value, or rather have regarded as evidence of value, what is commonly called “the contractor's test,” that is the interest on cost, which a contractor would require, if he provided the land and buildings for their present occupier. It has been pointed out (*f*) that the test must be not what the contractor would demand, but what he would be likely to get: and that the reasonable expectation of a contractor is a rough test, and some *prima facie* evidence, capable of being cut down by evidence on the other side, but not altogether to be put out of sight.

What percentage on structural value is to be taken as rateable value.—Assuming that the structural value of buildings and the value of land is ascertained, the question remains what rate of interest thereon must be taken as equivalent to rateable value.

(*c*) See the definitions in s. 1 of the Parochial Assessments Act, 1836, and in s. 4 of the Valuation (Metropolis) Act, 1869, in Appendix II., *infra*.

(*d*) *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68, *infra*, p. 258.

(*e*) See Chapter XV., *infra*, pp. 282 *et seq.*, where the question is further considered.

(*f*) *Per CAVE, J.*, in *R. v. School Board for London* (1885), 55 L. J. M. C. 33, at p. 34.

In the case of ordinary private property, perhaps the commonest practice is to take 4 per cent. on the value of land, and 5 per cent. on the value of buildings, with some higher percentage on the value of machinery, as representing the rateable value. Whatever be regarded as a reasonable return for capital outlay, it should be taken as the rateable, not as the gross value. The owner investing his money in land and buildings would say, "After paying all outgoings for maintenance and providing for depreciation and renewal, I must have 4 or 5 per cent. (or some other interest) on my outlay." It is the net return that he will have to consider, and it only complicates the question to fix some higher percentage as representing the gross value, in order to make some deduction therefrom for repairs, renewals, etc.

It is sometimes objected that to arrive at the rateable value first, and to make an addition thereto in order to arrive at the gross, is not only contrary to the intention of the legislature in defining net annual, or rateable value (*g*), but also involves the anomalous result that (given the rateable value) the greater the cost of repairs, the greater will be the rent which the yearly tenant must be supposed to be willing to give. Yet the result is not so absurd as at first sight appears.

Suppose a tenant asks his landlord (on whom the burden of repairs falls under the agreement of tenancy) to put up additional buildings in consideration of an addition to the annual rent. If the buildings will require very little repair, the landlord may well be content with an additional rent representing 5 per cent. on the cost of the proposed buildings. But if the fund for repairs and renewals will swallow up a third of the rent, as might happen in the case of manufacturing premises, the landlord will ask more than 5 per cent., and the tenant must either pay more or go without the new buildings. Consequently, in such a case at least, in order to solve the statutory problem, what rent may be expected to be given by a tenant whose landlord bears the cost of repairs and renewals, one must first ascertain what the cost of repairs and renewals will be, in order to know what rent a landlord will be willing to take.

In the case of quasi-public property such as universities (*h*), colleges, public schools, and charitable institutions (*i*), it is not now the practice to take so much as 4 per cent. on land, plus 5 per cent. on buildings, as representing rateable value. Sometimes the question is asked, at what rate can the occupier

(*g*) See the definition in s. 1 of the Parochial Assessments Act, 1836, and s. 4 of the Valuation (Metropolis) Act, 1869, in Appendix II.

(*h*) As to Oxford University, *vide supra*, p. 178.

(*i*) In *Royal Masonic Institution v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1891—1893), the London Quarter Sessions took 4 per cent. (perhaps less) on structural value of land and buildings in rating a charitable institution. Note that since the date of that decision, the percentage usually applied to buildings belonging to public authorities has been gradually reduced.

borrow money? But it is submitted this is not the best test, when one is not dealing with property bought or provided by means of a loan charged on local rates. In dealing with property in the hands of public trustees, the valuer should surely ask himself the question which the actual occupier would ask before he acquired land or buildings, viz: "What income shall I lose if I take money out of investments in order to acquire this property?"

Public bodies able to borrow money at low rates of interest.

—In the case of public bodies, such as county councils, school boards, and the like, the fact that the public body borrow money at less than 3 per cent. must apparently be taken into account (in connection with the other circumstances affecting that body) in fixing the percentage on structural value, which is to be taken as representing rateable value.

In *London County Council v. Erith and West Ham (k)*, Lord HERSCHELL, L.C., said:

"It was said [in argument] that a practice prevails of taking 5 per cent. on the cost in the case of buildings, as a basis for arriving at the rental. Such a rule of thumb may be all very well where the premises would be likely to find competing tenants, but it is not by any means necessarily applicable, where it is thought that the owner would be likely to give a higher rental than anyone else. It would often be obvious that he would never be willing to pay the rent arrived at in such a fashion, inasmuch as it would be more advantageous for him to become the owner. There are many other circumstances, too, which may affect the answer to the question what the owner of premises would have been willing to give if instead of becoming the owner he had become the tenant of them. In all cases of the description of which I am speaking, the whole of the circumstances and conditions under which the owner has become the occupier must be taken into consideration, and no higher rent must be fixed as the basis of assessment than that which it is believed the owner would really be willing to pay for the occupation of the premises."

This passage emphasizes the fact that interest on cost (or on value) is not the measure of rateable value, but is only evidence of the rent which the particular occupier may reasonably be expected to pay (*l*), and this point has been overlooked in the contention (sometimes put forward) that the rate of interest at which the particular local authority can borrow must be applied—not to the actual sum borrowed—but to the structural value of the buildings, added to the value of the land (as a cleared site) on which they stand. Thus, in dealing with the School Board for London, it has been contended (*m*), that the capital value must be ascertained by

(k) [1893] A. C. 562, at p. 593: Ryde's Rat. App. (1891—1893) 413, at p. 429.

(l) See *Mayor, etc. of Liverpool v. Llanfyllin Union*, [1899] 2 Q. B. 14, at p. 21, *supra*, p. 178.

(m) See, for example, *School Board for London v. Islington* (1885), Ryde's Met. Rat. App. 393; *Vestry of St. Pancras v. School Board for London*, Ryde's Rat. App. (1886—1890), 169.

eliminating the expenses which the school board have been compelled to incur in putting in force compulsory powers, and compensating the owners and occupiers of buildings to be demolished; and it has been contended that these expenses no more add to the value of the land and buildings, in the hands of the school board, than the cost of prolonged litigation as to title adds to the value of an ordinary house in the hands of the owner. To this the answer has been given, that "if the special facilities of the school board, in borrowing money at a low rate of interest, be taken into account, the peculiar disadvantages which they are under ought also to be taken into account. They must build their schools in a crowded neighbourhood: therefore they will almost certainly be driven to use compulsory powers, and settle questions of disputed compensation. In deciding what rent they would give for the property assuming it to be built for them, they would calculate all the sums which they would have to pay to secure other premises, whether by way of purchase money for land, compensation for injury to trade, or legal expenses: and it is on the *total* outlay that they would have to pay interest" (n). This argument is supported by the decision of the Court of Appeal in *Mayor, etc. of Liverpool v. Llanfyllin Union* (o).

Another point must be noticed: if a local authority buy land and erect their own buildings, they probably cannot get rid of those buildings and go to others without losing some part of their capital outlay: if they are supposed to become yearly tenants of such buildings, they could leave at the end of any year without serious loss. In considering whether they will incur an outlay of (say) 100,000*l.*, borrowed at 3 per cent., or become tenants and pay a rent of (say) 3,000*l.* a year, the local authority and their hypothetical landlord must be supposed to take into account the possibility that the buildings may hereafter become unsuitable, from a change in circumstances wholly independent of the buildings themselves. In the case of schools, or fever hospitals, a change in the population in the neighbourhood might render it desirable to move: in the case of a hospital, changes in medical treatment might render the buildings unsuitable. The risk may be very great, or so small as to be inappreciable; but the possibility of its existence cannot be ignored.

From what has been said above it appears that the question, what percentage is to be taken as representing rateable value, cannot be altogether severed from the question, what is the capital value on which interest is to be charged—on total outlay or on structural value only? Both questions, it is submitted, are rather questions of fact for the sessions, than questions of law for the High

(n) See the argument of Mr. H. B. POLAND, in *School Board for London v. St. Mary, Islington* (1885), Ryde's Met. Rat. App. 393, at p. 398.

(o) [1899] 2 Q. B. 14, *supra*, p. 178.

Court (*p*), seeing that both are merely put in order to ascertain what rent a particular occupier might reasonably be expected to pay.

In the latest case in the High Court dealing with the subject (*q*), the sessions found that if the schools to which the appeal related were vacant, they would let to tenants other than the school board at a rent high enough to support the assessment, which was equal to 4 per cent. on the value of the land, plus 5 per cent. on the value of the buildings: but that the school board could borrow money at 2l. 13s. per cent. On these findings, the Queen's Bench Division upheld the assessment. It must be noted that the findings of the sessions put the school board out of court, for rateable value is the highest rent which *any* tenant might be expected to give.

Deduction for repairs, insurance and other expenses.—

Where these expenses are paid by the landlord, the amount to be deducted from the rent is not the sum actually spent in each year, but the probable annual average (*r*). A sinking fund for renewals when the premises are ultimately worn out, should also be allowed (*s*), even though the owner does not in fact actually set aside such a fund (*t*). Where, as in the ordinary form of lease for a term of years, the tenant undertakes the cost of repairs and insurance, no deduction under either of these heads must be made from the actual rent. The tenant must be assumed to have taken into account the liability to repair and insure in fixing the rent, and to have agreed to pay a lower rent than he would have paid if the landlord had undertaken the liability (*u*). To deduct the cost of repairs and insurance from the actual rent would, in such a case, be equivalent to making the deduction twice over. The rent paid under a repairing lease is therefore (at the moment when it is fixed) approximately the same as the net annual (or rateable) value, subject only to a deduction for a renewal fund, for repairs (or insurance) not covered by the lessee's covenants, and for any special expenses "necessary to maintain the hereditament in a state to command the rent." The rent payable under a lease is of course not conclusive evidence of value during the whole of the term, and if it can be shown that, since the date when the rent was fixed, the value of the property has risen or fallen, the rateable value must be altered accordingly (*v*).

(*p*) See the decision of the Queen's Bench Division in *Mayor, etc. of Liverpool v. Llanfyllin Union* (1899), 78 L. T. 835, at pp. 837, 838; and *cf. London County Council v. Woolwich Union*, Ryde's Rat. App. (1891—1893) 126, at p. 133.

(*q*) *School Board for London v. Wandsworth and Clapham Union* (1900), 16 T. L. R. 137.

(*r*) See the definitions of net annual (or rateable) value in s. 1 of the Parochial Assessments Act, 1836, and s. 4 of the Valuation (Metropolis) Act, 1869, in Appendix II.

(*s*) *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73, at p. 86; see also p. 260, *infra*.

(*t*) *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313.

(*u*) *R. v. Wells* (1867), L. R. 2 Q. B. 542.

(*v*) *R. v. Skingle* (1798), 7 T. R. 549; *R. v. School Board for London* (1886), 17 Q. B. D. 738, *supra*, pp. 155, 156.

PART III.

DIFFERENT KINDS OF PROPERTY.

CHAPTER XIV.

RAILWAYS.

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Preliminary.—The great bulk of railway property in England has come into existence since the passing of the Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), which by s. 1 made the rent, which a hypothetical yearly tenant might be expected to pay, the measure of annual value. It will be seen that the rating of railways was (in the earlier cases at all events) founded on the rules previously laid down by the judges for the rating of canals. "Whether the circumstances of railways, which were in 1836 a comparatively infant interest, escaped the notice of the legislature, or were advisedly thought not to need any special provision, certain it is that none was made" (a). In 1851, Lord CAMPBELL, C.J., when adjourning a case to the next term (b), expressed the hope "that before the next term Parliament might interfere," and relieve the court from the difficult position in which they were placed, when called upon to administer the existing law with respect to the rating of railways; and added—"If we settle these questions [raised by the special case] we may be considered as legislators rather than as judges, making rather than expounding the law. At all events we must proceed upon the most improbable

(a) *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, at p. 361.

(b) *R. v. Great Western Rail. Co.* (1851), 15 Q. B. 379; see pp. 396, 398, 1085.

and nearly absurd supposition, that a person would be found who would take the portion of the railway which passes through a single parish, and no more, as tenant from year to year" (c). Notwithstanding these protests, Parliament has not interfered, and railways are still rated according to the general rule which applies to all other property. It is true that s. 9 of the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), provides that :

"Any difference to which a railway company or canal company is a party may, on the application of the parties to the difference, and with the assent of the Commissioners (d) be referred to them for their decision."

But this section merely alters the tribunal before whom an appeal against a rate may be brought, by consent of the parties, and leaves unaltered the legal principles on which a railway company are to be rated.

General principles on which railways are to be rated.—The rating of that part of a railway system which lies within a particular parish cannot fail to be a complicated problem (e). In order to arrive at the general principles, let us assume a very simple case, though probably such a case never has occurred and never will occur in actual practice ; and let us assume that the whole of the railway system (including both line and stations) lies within the parish for which the rate is made ; that the system is in the hands of a single company, who are both owners and occupiers ; that the company have no running powers over any other company's line, and that no other company have running powers over the system to be rated.

Assuming that we have to value a railway, with all its stations, lying entirely in one parish, how are we to ascertain (as we are required to do by the Parochial Assessments Act, 1836) the rent at which it might reasonably be expected to let ? As railways are never let from year to year, and (if they were) the value of one railway would not be of any use as evidence of the value of another, we are driven to base the calculations on the profits actually made by the occupiers. But on what profits ? Are we entitled to bring into account the trade profits made by the occupier as a carrier ?

(c) Cf. *R. v. Coventry Canal Co.* (1859), 1 E. & E. 572, at p. 580 ; *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716, at p. 728 ; *Smith v. Churchwardens of Birmingham* (1889), 22 Q. B. D. 703, at p. 705 ; *Ryde's Rat. App.* (1886—1890) 297, at p. 308 ; and *Merthyr Tydfil Local Board v. Merthyr Tydfil Union*, [1891] 1 Q. B. 186, at p. 192.

(d) The Railway Commissioners appointed under that Act. The jurisdiction of those Commissioners is now vested in the Railway and Canal Commission as constituted under the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25) : see s. 8.

(e) A summary of the most commonly used method of valuing a line of railway will be found *infra*, p. 250.

The rating of railways was originally founded upon the decisions as to the rating of canals, with which the courts had long been familiar; and in *R. v. Duke of Bridgewater's Trustees* (*f*), it had been held that the rateable value of a canal was the rent for which it would let, and not the full amount of the occupier's profits, including the profits of his trade as a carrier. But in the first railway rating appeal that is reported (*g*), it was held that in calculating the rateable value of the line, it was right to take into account not only the sum which would be received by a person having the exclusive right to take tolls for the use of the railway, but also the further profits (over and above such tolls) earned by the company by carrying on the trade of carriers, on the ground that the facilities afforded by the line and buildings for carrying on a lucrative trade undoubtedly added to their value, and that the higher rent which might be obtained for this reason must have been taken into account in estimating the rateable value, whether the case arose either before or after the passing of the Parochial Assessments Act, 1836.

In the course of the judgment, Lord DENMAN stated that "the supposition of a free competition of carriers on the same railway was little else than absurd," and that it was difficult to suppose any competition possible with the company in occupation, who were in fact the only persons trading as carriers over the line. In *R. v. Grand Junction Rail. Co.* (*h*), besides the company rated as occupiers (who themselves traded as carriers), two other classes of persons exercised the right of being carriers over the railway: the first class providing for themselves locomotive power and carriages: the second class hiring from the company locomotives, but providing their own carriages: both classes paying tolls to the Grand Junction Company. And, on this difference in circumstances, an attempt was made to distinguish the case from *R. v. London and South Western Rail. Co.* (*i*), but the court held that this difference did not affect the principle of rating. Lord DENMAN thus explained (*k*) the former decision:

"We applied [in *R. v. London and South Western Rail. Co.*] the established principles of rating—that the rate is to be on the occupier in respect of the beneficial nature of his occupation, in estimating which as to amount, or, to put it in other words, in ascertaining how much net rent such or such an occupation might be expected to command, parish officers are to consider, not drily and only what would legally pass by a demise of it, but all the existing

(*f*) (1829), 9 B. & C. 68: *vide infra*, p. 340. It is to be noticed that the case was decided *before* the passing of the Parochial Assessments Act, 1836, which shows that the principle of valuation adopted by that Act had been already regarded by the courts as implied by the Statute of Elizabeth.

(*g*) *R. v. London and South Western Rail. Co.* (1842), 1 Q. B. 558.

(*h*) (1844), 4 Q. B. 18.

(*i*) (1842), 1 Q. B. 558, *supra*.

(*k*) 4 Q. B. at p. 36.

circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy, as to the amount of rent to be asked or given" (l).

After referring to the fact that other companies (besides the appellants) carried on the trade of carriers, paying tolls to the appellants, and that in *R. v. London and South Western Rail. Co.*, the company in occupation alone acted as carriers, Lord DENMAN continued (m):

"We cannot perceive how this difference bears upon the principle on which the present rate is to be examined, or which governed the court in the former decision. . . . In both [cases] the inquiry must be the same: what is the value of the occupation, from whatever source derived? In neither can the profits of trade, as such, be brought into the rate; but if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded merely because it is referable to the trade. Suppose a house occupied by a private family to-day, which, having great advantages of situation for the purposes of trade is turned into a shop to-morrow, and in consequence lets for double or treble the former rent; would not the rate be properly increased in proportion? Could it be objected that to do so was to rate the profits of trade? . . . There is a fallacy in confounding that which the lease conveys a legal title to, and that which it gives the lessee the means of doing or enjoying. No two things can be more distinguishable; and it is the latter which regulates the rent a tenant will give, and not the former. Suppose two estates of equal size and in all respects of equal fertility; but one is surrounded by excellent roads or has a canal near to it, or is near a large market, and the other is without these advantages; of course the rent and the rateable value of the one will be larger than the other; yet the tenant would take no more by the lease of the one than of the other; the lease would give him no legal title, which he had not before, to use the roads, the canal, or the market . . . It is quite true that if the company were to let the railway to a tenant, the lease would convey the land and railway only, and give a title to the tolls only; but the lessee would undoubtedly consider the facilities and advantages which the occupation as tenant would afford him for carrying on a lucrative trade as carrier; and in whatever proportion that consideration would increase his rent, in the same, after due allowances, would his rate be raised also."

No allowance to be made for "goodwill" in rating a railway.—In *R. v. Grand Junction Rail. Co. (n)*, it was held that no deduction must be made from the receipts of a railway company for the "goodwill" of their business.

The meaning of the term "goodwill" will be further considered hereafter (o), and it may be sufficient to point out here that, if by "goodwill" is meant the value of the trade which is necessarily

(l) This statement of the principles of rating was affirmed in *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 201.

(m) *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B., pp. 38—41.

(n) (1844), 4 Q. B. 18.

(o) See Chapter XXIV., *infra*.

attached to the occupation of a railway, and which every occupier might reasonably be expected to secure, to the exclusion of other carriers merely exercising the rights of the public to run over the line, the value of that trade (by whatever name it may be called) would undoubtedly affect the rent which a tenant might reasonably be expected to pay : in other words, it must be taken into account in estimating the rateable value. For though the profits of trade as such cannot be rated, yet, "if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded merely because it is referable to the trade" (p).

Enhancement of value of land by rails and sleepers.—In *Great Western Rail. Co. v. Melksham* (q), the company, relying on *R. v. Halstead* (r), contended that the rails and sleepers were not rateable in addition to the land, but were in the nature of furniture or chattels. It was stated that the rails could be removed, and that the whole line could be raised or lowered, or moved laterally ; further that the rateable value of the line should be reduced from 900*l.* to 90*l.*, if the rails and sleepers were not rateable. But the court held that the sleepers and rails (s) were substantially an addition to the freehold, and were properly included as an item of value. This decision agrees with *Turner v. Cameron* (t), in which it was held that the sleepers and rails were fixtures, and were not distrainable for rent.

Application of general principles in practice.—We have already seen that the rateable value of a railway system, as a whole, is to be calculated in some way from the gross receipts of the company. From these receipts must be deducted the working expenses (including the rates), the tenant's share of the profits, and the cost of repairs, insurance, and other expenses necessary to maintain the hereditament in a state to command the rent. The remainder will represent the rateable value of the whole system, including both line and stations. This method of calculation, which was in fact adopted in *R. v. Grand Junction Rail. Co.* (u), would have resembled very closely the method adopted in the case of gasworks and waterworks (x), as it arrives at the rateable value of the

(p) *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at pp. 38, 39, *supra*, p. 191.

(q) (1870), 34 J. P. 692.

(r) (1867), 32 J. P. 118 ; that case is considered in Chapter XXV., *infra*.

(s) The judgment does not expressly mention the rails, but it cannot have been intended to exclude them, for, if so, the rateable value appealed against must have been too high.

(t) (1870), L. R. 5 Q. B. 306 : see also Chapter XXV., as to the rateability of fixtures attached to the soil.

(u) (1844), 4 Q. B. 18.

(x) See pp. 281 *et seq.*, *infra*.

whole undertaking first, leaving till the last the question of apportionment between the several parishes into which the undertaking extends. But, rightly or wrongly, in later cases, the practice has become universal to start with the gross receipts in the particular parish for which the rate is made, and to deduct therefrom the expenses in that parish, and the share of the profits which the tenant of the section in the parish would expect. This method of calculation, however, follows the form which has been indicated above, save that it starts with figures representing receipts, expenses, profits, etc., in the particular parish, so that there is no ascertainment of the rateable value of the whole undertaking, and no necessity for an apportionment of that rateable value among several parishes.

Rateable value of stations as distinguished from line.—The profits of a railway are made (speaking generally) by conveying goods and passengers from place to place: the running line, therefore, is the direct source of profit, while the stations (*y*) are not, in themselves, a source of profit, but of expense; though, as the expense is necessary in order to earn the profits of the running line, the stations may be, and, in practice, always are regarded as indirectly productive of profit, in the same way as the works and carrying mains of gasworks, or waterworks are treated (*z*).

In *R. v. Great Western Rail. Co.* (*a*) there were no stations or buildings in the parish of Tilehurst (for which the rate appealed against was made), and the appellants sought to make a deduction (*b*) from the estimated net receipts in the parish, for “the buildings, stations, shops, sheds and other erections appurtenant to the Great Western line alone, rated or rateable separately from the railway, and necessary for the proper enjoyment of it.” The court allowed the deduction (*c*), and held that it made no difference whether the station, for which the deduction was claimed, was in the same parish, or at a distance.

It is clear that when the net profits of the whole undertaking have been ascertained, they represent the fund out of which the

(*y*) Apart from the question of “terminals” (which is considered, *infra*, p. 252), and receipts from advertisements, letting of bookstalls, and the like; *vide infra*, p. 199.

(*z*) *Vide infra*, p. 281 *et seq.*; *R. v. Mile End, Old Town* (1847), 10 Q. B. 208; 16 L. J. M. C. 184; *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; 28 L. J. M. C. 195; *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73. This method of valuation was recognised as well established in *R. v. Eastern Counties Rail. Co.* (1863), 32 L. J. M. C. 174, at p. 177. The station is not necessarily to be entered as a separate item in the valuation list: *vide supra*, p. 194.

(*a*) (1846), 6 Q. B. 179, sometimes called “the first *Tilehurst Case*,” to distinguish it from *R. v. Great Western Rail. Co.* (1851), 15 Q. B. 379, *infra*, p. 206.

(*b*) As to the precise amount of the deduction, *vide infra*, p. 194.

(*c*) The argument for the respondents (as reported in 6 Q. B., at p. 187) appears to apply only to a deduction for the rates on the stations, buildings, etc., and not to a deduction for their rateable value: a deduction under both heads must clearly be made.

hypothetical tenant will have to pay his rent and to draw the profits, the making of which is the inducement to him to become a tenant. Now, in order to earn the whole of the net profits, he must become tenant both of line and stations, even though the stations are not directly a source of profit at all. Having deducted the tenant's profits over the whole system, the remainder will represent the rent which he can afford to pay both for line and stations. And in order to ascertain the rent which he can afford to pay for the line, one must deduct the rent which he will have to pay for the stations.

One other point must not be overlooked. The rates which the hypothetical tenant will have to pay for the whole system will be a considerable sum, and he will bring them into account and deduct them from the gross receipts, before arriving at the sum which he will pay to the landlord (*d*). The hypothetical tenant will not only have to pay a rent for the stations, but he will also have to pay the rates thereon ; so that, at some stage in the calculation, a deduction sufficient to cover the outgoings under both heads must be made. And unless the cost of repairs and insurance of stations be included among the expenses of the whole system, the sum to be deducted from the net profits in respect of the stations must be a sum representing the *gross* value (plus the rates), and not the *rateable* value (plus the rates), of the stations. For if the landlord bears the cost of the repairs and insurance of the stations, then the rent which the tenant will pay for the stations will correspond to the gross value : if, however, the tenant undertakes to bear those costs, and they are included among the tenant's working expenses, then the rent which the tenant will pay for the stations will correspond to the rateable value.

Inasmuch as the value of the stations over the whole system must be deducted from the value of that system in order to ascertain the value of the running lines, it follows that in ascertaining the value of each mile of running line some deduction must be made for the value of the stations over the whole system ; since each mile must (so to speak) contribute from its earnings towards providing the stations for the whole system. But in a parish containing both station and running line, both subtraction and addition must be made : from the earnings of the running line must be subtracted the proportion representing the contribution towards the stations for the whole system ; but there must be added to the value of the line the value of the station within the parish.

The amount of the deduction from the earnings of the running line, as representing the contribution towards the value of the

(*d*) *Type Improvement Commissioners v. Chirton* (1862). 32 L. J. M. C. 192. See also *R. v. Hull Dock Co.* (1824), 3 B. & C. 516, at pp. 527, 528. That case was decided before the passing of the Parochial Assessments Act, 1836, but the reasoning of the judgment is conclusive.

stations of the whole system, ought to depend (if it were calculated strictly) upon the true rateable value of all the stations over the whole system (*e*), but there is some little difficulty in doing this. For the valuation list does not always show the rateable value of a station as a separate item, apart from the line in the parish, so that it is impossible to ascertain from the several lists what is (in theory) the true rateable value of all the stations. Further, even if the valuation lists always showed a separate value for the stations, it could hardly be said that those values were *necessarily* the true rateable values. In valuing running lines, it is a very common practice to estimate the deduction to be made for the value of the stations by a rule of thumb. The rateable value of all the stations of the system represents a percentage on the gross receipts: this percentage (whatever it is) must be deducted from the gross receipts wherever earned, and, applying that percentage to the gross receipts in the particular parish, we arrive at the deduction to be made in that parish for the stations over the whole system. It may probably be said to be the most usual practice to take 5 or $5\frac{1}{2}$ per cent. on the gross receipts as representing the rateable value of stations to be deducted; and to this must be added the average rates calculated on such rateable value and the cost of repairs, renewals and insurance (*f*).

Distinction between station and running line.—Although the running line need not *necessarily* be entered in the valuation list separately from a station (if there is one in the same parish) (*g*), still the two kinds of property are valued on entirely different principles, and questions of difficulty frequently arise in distinguishing between running lines and lines which are used as sidings, and must be regarded as part of the station. The effect of the latest decision (*h*) on the point appears to be that these are really questions of fact. The question is important, because (in a parish containing a large station) if it can be shown that the receipts earned in the parish are to be attributed to a small number of lines, the remaining lines will be regarded as forming part of the station, and their value (as indirectly contributing to the value of the whole system) will be added to the value of the running lines which are directly productive of profit. If all the lines can be regarded as running lines, there will be nothing to add, and the value of all the

(*e*) In *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68, at p. 72, the Queen's Bench held that the deduction in respect of stations, buildings, and sidings must be calculated on the actual value at which they ought to be assessed, and not [at a percentage] on the original cost of construction: *cf. R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359; *infra*, pp. 287, 288.

(*f*) Unless the rates and repairs are deducted at another stage of the calculation as part of the rates on, or repairs of, the entire system.

(*g*) *North Eastern Rail. Co. v. York Union*, [1900] 1 Q. B. 733; *supra*, p. 58.

(*h*) *Stockport Union v. London and North Western Rail. Co.* (1898), 78 L. T. 180; 67 L. J. Q. B. 335. See also *North Eastern Rail. Co. v. York Union*, [1900] 1 Q. B. 733; *supra*, p. 58.

lines will be limited by the earnings in the parish, subject to the usual deductions.

In *Stockport Union v. London and North Western Rail. Co.* (i), the appeal related to the lines in the Stockport station. Four lines ran into the station over a viaduct from the north, and five lines ran out of it through a tunnel on the south, and after leaving the tunnel spread out into eight. The case found that between the viaduct and the tunnel four lines of railway would be sufficient to carry all the traffic if there were no station at Stockport. Besides these lines and others which were admittedly sidings, there were eleven other lines which were in dispute. These were occasionally used for standing vehicles; some of them were used for running goods trains through the station when the four main lines were occupied; some led only to a warehouse or a coal yard; and on some, passenger trains ran. All the lines in dispute were held by the Queen's Bench and by the Court of Appeal to be running lines. The rule laid down by the court appears from the following extract from the judgment of A. L. SMITH, L.J. (k):

"It was contended on behalf of the appellants that, if these lines came into existence for the purpose of the station, and would not have been wanted if no station had existed, they must be sidings and not running lines. In the first place, I do not agree with that contention. But that is not the question which we have to decide. The question is, whether the primary purpose for which these lines came into existence, and for which they are used, was their use as running lines or not as running lines, that is to say, as sidings. Now, before going into the facts of this case, I wish just to refer to the decision of FIELD, J. (which was cited during the argument), in *Great Eastern Rail. Co. v. Fletton* (l). In that case, FIELD, J., is reported to have said that, 'if any shunting were done upon these two lines, and it was found that they had been used for shunting, then the result would have properly gone into the other assessment,' that is to say, the two lines would be assessed as appurtenant to the station. I think it is impossible that that can be correct, and for this reason: Take any one of the four principal passenger lines at Stockport on which express trains run, and which are, beyond all question, running lines; it could not possibly be argued that if any shunting were done upon that line, the line would be thereby converted into a siding. . . . The line No. 5 is the working line into the company's warehouse (m), and the primary and principal purpose for which it is used is for carrying traffic into and from the warehouse. On that ground I hold it is a running line. . . . [Other lines in dispute] are feeders to the main line for passenger and goods traffic. They run into what have been called dead ends, but they were made and are used for the purpose of running passenger and goods traffic from the main line into the different towns to which the various branches go. It is true that carriages when not in use are left standing upon these lines in the daytime and sometimes at night, but how are the lines thereby converted into being other than running lines?

(i) (1898), 78 L. T. 180; 67 L. J. Q. B. 335.

(k) 78 L. T., at p. 181.

(l) Reported in Balfour Browne on Rating, 2nd ed., p. 631.

(m) The line led only to the warehouse and ended with buffer stops, and was sometimes used for standing and unloading goods waggons.

They were constructed for the express purpose of running the traffic from one terminus to another, not merely to be used for the purposes of standing carriages" (*n*).

It has been decided that signal-boxes must be valued separately from the running line (*o*). But the London quarter sessions have held that levers and signals must be treated as part of the running line (*p*). It is submitted that, for the question with which we are now dealing, it is of little use to refer to cases decided on ss. 211, 232 of the Public Health Act, 1875, which give to a line of railway (as distinguished from buildings) a three-fourths exemption from the rates levied by urban and rural district councils. For, under those sections, sidings would be rated as line of railway, while they would be rated as station for purposes of poor rate. In *London and North Western Rail. Co. v. Llandudno* (*q*), sidings and platforms, and the roof over them, were (either by admission or decision) taken as line of railway.

The measure of the rateable value of stations.—We have already seen (*r*) that stations are treated in the same way as the works and carrying mains of gasworks, and waterworks (*s*). Roughly speaking, in valuing a single station, the practice is to take a percentage on the capital value of the land and buildings, the most commonly accepted rule being to take 4 per cent. on the estimated value of the land, and 5 per cent. on the structural value of the buildings. In arriving at the capital value, whatever percentage be taken, the cost of boundary walls and of paving must be considered. In *London and South Western Rail. Co. v. Lambeth* (*t*), the question was raised whether, in valuing Waterloo Station, which stands upon high arches, the structural value of those arches ought to be brought into account, whether they were or were not let to tenants for stabling, and similar purposes. For the company it was contended that the arches did not increase the value of the station, because (given the same accommodation) a station built upon the level was more convenient than a station on arches: that to bring in the cost of the arches was equivalent to contending that the greater the expense rendered necessary by the inconvenience of the site, the greater must be the value of the

(*n*) This decision appears to overrule the decision of the Railway Commissioners in *London and North Western Rail. Co. v. Wigan Union* (1876), 2 Nev. & Mac. 240, that in rating a station only the average quantity of land required for the main tracks, and only the permanent way necessary to such tracks at any point of their length should be excluded: and that sidings, though used to give free passage to through traffic, should be included.

(*o*) *Midland Rail. Co. v. Pontefract Union*, [1901] 2 K. B. 189; 64 J. P. 436; 84 L. T. 536; 17 T. L. R. 139.

(*p*) *South Eastern and Chatham Rail. Co. v. St. Saviour's Union* (1901), Ryde & Konstam's Rat. App. (1894—1904).

(*q*) [1897] 1 Q. B. 287.

(*r*) *Vide supra*, p. 193.

(*s*) *Vide infra*, pp. 281, 282.

(*t*) (1881), Ryde's Met. Rat. App. 258; before the assessment sessions.

hereditament. For the parish it was argued that the company must be assumed to understand their own requirements : and if they deliberately elected to incur the expense of erecting arches, it must be presumed that it was worth their while to do so (*u*). The court, without expressly deciding the question, held that though the structural value of the arches was not the sole criterion, yet it was not to be wholly disregarded in estimating the rateable value of the station (*v*).

A difficult question arises in valuing a long terminal station covered by a roof, if the running lines are regarded as continuing up to the buffer-stops (*y*). Great part of the space covered by the roof (which is itself often a costly item in the valuation of a station) is then occupied by the running lines. On behalf of the company it may be contended that it cannot be right to rate them for the profits they earn on the lines regarded as running lines, and in addition to rate them for what represents an annual loss in providing the station roof. On behalf of the rating authority it may be contended that it cannot be right to ignore part of the value of the roof, and that to divide up a roof of a single span into longitudinal strips involves an absurdity. The sessions (it is believed) have hitherto refrained from deciding this question.

Goods depots and warehouses adjoining railways.—Where a railway company have a dépôt, or warehouses, of which parts are either let to tenants (who become the rateable occupiers) or are used by persons who have rights in the nature of easements, for which they pay fixed sums resembling rent, the question has arisen how these dépôts, or warehouses, are to be valued. It may be that the company accept lower rents, or similar payments, because of the profits from the traffic which they secure by getting the tenants, or licensees, to use the dépôts, or warehouses. In such a case the payment made, *eo nomine*, for the use of the dépôts and warehouses, does not represent their full value. In *London and North Western Rail. Co. v. Hackney Union* (*z*), the assessment sessions decided that a dépôt, though not directly communicating with the North Western Railway, and partly let to tenants, was to be rated on the same principle as an ordinary railway station, *i.e.*, at a percentage on the cost of land and buildings.

(*u*) It must be noticed that the cost of the arches was not rendered necessary by any miscalculation or mistake on the part of the company : *vide supra*, pp. 176–178.

(*x*) In the writer's opinion, the contention on behalf of the parish in the case referred to was well founded. The question was not whether the cost of the arches increased the rateable value of the system as a whole, but whether it did not show that a larger share of that value was within the parish of Lambeth. In theory, all that was added in Lambeth ought to be treated as a deduction spread over the whole of the running lines of the company's system.

(*y*) *Vide infra*, p. 253, as to the measurement of the running lines.

(*z*) Ryde's Rat. App. (1886–1890), 136.

And the principle of this decision was applied by the London quarter sessions to a warehouse communicating with a railway, in *London and North Western Rail. Co. v. City of London Union* (a), where the court fixed a much higher valuation than would have been warranted (according to the evidence) by the letting value of the floor space.

Bookstalls, refreshment rooms, and advertisement hoardings at stations.—Two questions arise with regard to these and similar matters : (1) who is to be rated ; and (2) how is the rateable value to be ascertained ? As to advertisements, the first question depends on the Advertising Stations (Rating) Act, 1889 (b), the effect of which is to make the railway company rateable, and not the person to whom the advertisement hoardings are let. As to bookstalls and refreshment rooms, the first question depends upon whether the company have retained, or parted with, the general control of the bookstall (or the spot which it occupies (c)) or of the refreshment room ; in the former case the company are rateable, in the latter they are not (d). In *Smith v. Lambeth* (e), Messrs. W. H. Smith & Son were held not liable to be rated for their bookstall at Waterloo Station ; and though every case must depend upon its own circumstances, the probability is that a similar decision would be arrived at with regard to most bookstalls (f). If the tenants are not rateable for the bookstalls or refreshment rooms, it follows that the railway company must be rated for both species of property.

It is, however, difficult to say how the rateable value of these properties is to be calculated in connection with the rateable value of the whole station. Is it right to ascertain the rateable value of the station as a whole from the structural value, and then add something in respect of the company's income from advertisements, the rent of bookstalls, etc. ? Suppose a wall is erected for the purpose of exhibiting advertisements, it cannot be right to rate it on its structural value, and again on the net income from advertisements. But suppose that a wall, or a roof, built primarily to shelter the platforms, also serves the purpose of exhibiting advertisements, or of sheltering a bookstall : ought the rateable value of the wall, or roof, to be increased because of the additional

(a) Ryde's Rat. App. (1891—1893), 229.

(b) 52 & 53 Vict. c. 27 : *vide supra*, p. 69.

(c) Assuming the bookstall to be a mere chattel (as it possibly may be in some cases) the use of the land for depositing a chattel thereon may still be sufficient to render either the company or their tenant rateable : see the judgment of Lord CAMPBELL, C.J., in *Chelsea Waterworks Co. v. Bowley* (1851), 17 Q. B. 358, at p. 362.

(d) *Vide supra*, p. 32.

(e) (1882), 10 Q. B. D. 327 ; *supra*, p. 36.

(f) *Cf. London and North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 70, 444, *supra*, p. 35.

value which it acquires by reason of its being used for purposes other than those for which it is primarily required? (*g*). It may be said that the station (for purposes of accommodating traffic) would be worth to the company a percentage on the structural value, because they must in any case have a station: if in addition they can earn money by the exhibition of advertisements, or by letting bookstalls and the like, the station becomes in proportion more valuable. At the same time, it may be said that although a percentage on structural value shows the *minimum* rateable value of the station, it does not follow that that value is to be in addition to any value that it may have by being partly productive of profit; and further that if the company were to receive enough from advertisements, rents of bookstalls, etc., to make the station in itself a source of clear profit, there would be no more reason than there is now in the case of the running line for adding a percentage on the structural value, to the value shown by the profits made. Moreover, any calculation which involves the addition of receipts from bookstalls, etc., to interest on cost of construction, seems to be open to the objection that interest on cost is an outgoing, and cannot be properly added to any form of income.

It seems clear, however, that the profits made by the exhibition of advertisements at stations, and similar matters, ought in some way to be brought into account. For otherwise a railway company which receives a large income from such profits is rated at no higher amount than if it had no such income.

In the writer's opinion, where the rateable value, calculated on the basis of the structural value of a station, exceeds (as it certainly does in most cases) any value that can be got from bookstalls, advertisements, and the like, the most logical course would be to rate the station with reference to structural value only, and, in rating the running line, to make a set-off in respect of the income derived from bookstalls, etc., against the deduction to be made for stations from the earnings of the running line. For in so far as the receipts from bookstalls, etc., provide a fund out of which the rent of the station and the rates thereon can be paid, a reduction is made in the claim upon the earnings of the running line to provide that fund.

If the rateable value attributable to advertisements, bookstalls, etc., is calculated from the rents (or payments in the nature of rent) received by the company, it must be remembered that out of these payments the company have generally to pay the cost of

(*g*) Where money is received for advertisements placed on walls or fences adjoining the running line, which is valued with reference to the profits made thereon, there can be no doubt that the money received from advertisements may properly be brought into account to swell the general receipts of the line.

repairs, and parochial rates; and these must be deducted to ascertain rateable value. And this deduction must be made whether the method above suggested is adopted, or the value of the bookstalls, etc., is added to the rateable value of the station.

When the tenant, and not the company, is rated for a refreshment room, it is open to him on the hearing of an appeal to show from his books what trade he is doing, and what rent that trade would enable him to pay (*h*).

Running lines, extending into several parishes.—We have seen (*i*) that the rateable value of all stations (whatever be the estimated amount of that value) constitutes a deduction from the earnings of the running lines; and the question now has to be considered in what way the rateable value of running lines is to be ascertained. If all the running lines of a railway system were situated in one parish, the problem would be comparatively simple; having ascertained the rateable value of the whole undertaking, and deducted therefrom the rateable value of the stations, the remainder would represent the rateable value of the running lines. But the problem which generally has to be considered is, what is the rateable value of the parochial section of a running line, which is worked as one integral whole, and extends into several parishes. This problem has given rise to a conflict of decisions, probably greater and more irreconcilable than any other problem in the law of rating. The cases may be roughly divided into two classes: (1) those which decide that the rateable value of the line in each parish is to be measured by the earnings and expenses in that parish; (2) those which decide that, although the line in a particular parish may *in itself* be productive of no net profits (because the parochial earnings are all swallowed up by the parochial expenses), yet the line may have a rateable value because it contributes to and increases the net profits earned in other parishes. In the former class of cases, the rateable value is calculated on what is called the “parochial principle”; in the latter class of cases, the rateable value of the line is made to depend upon what is called its “contributive value.” Attempts have sometimes been made to show that the two classes of cases can be reconciled; but in the writer’s opinion this is impossible, and in Appendix I. he has stated his reasons for thinking that the whole of the class of cases which have adopted the “parochial

(*h*) *Clark v. Alderbury Union* (1880), 6 Q. B. D. 139; *supra*, p. 171; but see the remarks on that case in *Dodds v. South Shields*, [1895] 2 Q. B. 133, at p. 137, and in *Mersey Docks v. Birkenhead*, [1900] 1 Q. B. 143, at p. 150. As to the question how far rateable value depends on trade profits actually made, *vide supra*, p. 168.

(*i*) *Vide supra*, p. 193.

principle" are based upon a fallacy, and lead to illogical results. It is, however, doubtful whether even the House of Lords would overrule a series of cases that has been acted upon for so long (*k*) unless it became necessary to overrule one or other of the two classes of cases above mentioned, because the two classes could not both stand together. For the present, it may be desirable to trace the history of the two classes, showing how the two contradictory principles were evolved.

Varying principles of apportionment adopted in early cases.

—In the early cases relating to the rating of railways, the question how the value of the running lines was to be apportioned among the several parishes into which it extended was raised, but not seriously contested. In *R. v. London and South Western Rail. Co.* (*l*), it was conceded that the rateable value was to be apportioned to the several parishes in proportion to the earnings in each parish, and not according to the mileage of the line in each parish. But in the next reported case, *R. v. Grand Junction Rail. Co.* (*m*), it was admitted (*n*), and the court approved of the admission (*o*), that the rateable value of the whole line in its entirety should be apportioned by a mileage division of its whole length. The effect of this principle of apportionment is to make each mile of branch line, though little used and productive of small profit, of equal value with a mile of the main line, where it is most crowded with traffic and most productive of profits. In the first *Tilehurst Case*, *R. v. Great Western Rail. Co.* (*p*), which related to a branch of the Great Western Railway, it appeared that the company were lessees of two other branch lines at rents which exceeded the net receipts on these branch lines (*q*) by 10,500*l.* a year. The parochial authorities had based their calculations on "the gross receipts of each mile in the parish of Tilehurst" (*r*), and had deducted therefrom a mileage proportion of the expenses of the whole of the railway, *including the branches*, and a like proportion of the tenant's profits; the balance being

(*k*) See *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 599; Ryde's Rat. App. (1891—1893). 382, at pp. 435, 436; and *cf.* *R. v. Sheffield Gas Co.* (1863), 32 L. J. M. C. 169, at p. 172; *Crease v. Sawle* (1842), 2 Q. B. 862; *Morgan v. Crawshay* (1871), L. R. 5 H. L. 304.

(*l*) (1842), 1 Q. B. 558, see p. 574.

(*m*) (1844), 4 Q. B. 18.

(*n*) See p. 22, *ibid.*; but it is not quite clear that the admission applied to the apportionment of rateable value if calculated with reference only to the tolls: see p. 21, *ibid.*

(*o*) See p. 38, *ibid.*

(*p*) (1846), 6 Q. B. 179.

(*q*) The earnings of the two branch lines (and, apparently, of each of the two lines) were more than sufficient to pay the working expenses; but the total net receipts were less than the rents by 10,500*l.*

(*r*) *Primâ facie* this means the *actual* receipts in Tilehurst, and not a mileage proportion of the gross receipts of the whole system; but the argument, in 6 Q. B. p. 195, states the latter method of calculation to have been adopted.

taken as the rateable value in Tilehurst. So far no objection was raised, but the company claimed further deductions for (*inter alia*) loss on the branch lines : the court, however, disallowed the claim. Lord DENMAN, C.J., said (*s*) :

“ If the rate in question had been imposed on land forming any part of the branch lines themselves, it is clear that the circumstance of the receipts not equalling the rent—in other words, that the line was worked at a loss—could not have affected the rate (*t*) ; the occupation would still have been beneficial in the sense in which that word is used for the purpose of assessing the rate : and the rent which, from whatever motive, the appellants found it worth their while to give, would have regulated the amount (*u*). This is not that case in the way in which it is sought to make this expenditure bear upon the rates assessed on any part of the main line : it is more like money laid out in the way of improvement, for which no deduction should be made. If the lessee of a coal mine were to open roads through adjoining lands rented under a separate demise, in order to facilitate the access of customers to the mine, and so increase its profits, the expense of such roads would certainly not be an outgoing to be allowed for by the overseers ” (*x*).

In the case we are now dealing with (*y*), if by “ loss on the branch lines ” is meant the loss after deducting the rent, it is plain that rent cannot be treated as an outgoing. For the problem is to ascertain what rent the hypothetical tenant can and will pay, and in solving that problem it cannot be right to deduct the rent which the actual tenant happens to pay. If that were so, the rateable value of a line when occupied by the owner, who paid no rent, would be greater than that of the same line when let to a yearly tenant (*z*).

The “ parochial principle ” laid down in the Brighton Company’s Case.—In 1851 judgment was given by the Queen’s Bench in three cases stated on appeals by the London, Brighton and South Coast, the South Eastern, and the Midland Companies respectively (*a*). The appeal by the Brighton Company related to part of their main line in Croydon, where the parochial authorities had based the rateable value on the net receipts in the parish. The appeal by the South Eastern and Midland Companies related to lines which had been rated with reference to a mileage proportion of the earnings of the whole system (no doubt because such

(*s*) 6 Q. B., at p. 206.

(*t*) *Cf. R. v. Parrot* (1794), 5 T. R. 593 ; *supra*, p. 128.

(*u*) In this sentence Lord DENMAN seems to accept to the fullest extent the principle that “ contributive value ” may be the foundation of rateable value.

(*x*) See the remarks on this passage in Appendix I., *infra*, where an attempt is made to show the distinction between a deduction from rent and a deduction from net profits.

(*y*) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179.

(*z*) *Vide supra*, p. 175.

(*a*) See *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313 ; 20 L. J. M. C. 124.

proportion was larger than the actual earnings within the parish). The court, after taking some months to consider, affirmed the principle on which the Brighton Company were rated and quashed the rates made on the "mileage principle." Upon this point COLERIDGE, J., after referring to the definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836, said (*b*) :

"The subject is parochial; the inquiry is to be conducted by parochial authorities with limited powers: if any matters specified in the section are locally situated without the parish (*c*)—that is, if any such affect the amount of the 'net annual value,' or 'rent at which the same might reasonably be expected to let'—they will of necessity fall within the range of the inquiry. But beyond this the principle does not go. This principle, so limited and understood, was not first created by the statute just mentioned: the court had decided, so early as 1827, in the case of *R. v. Kingswinford* (*d*), that it was to be found in the original statute of Elizabeth; and since that decision it has been uniformly applied (*e*) to cases where the same party, whether company or individual, occupies in different parishes land forming one entire property, such as a canal, though the profits may be earned in different proportions, and with a different rate of outgoings in each. The value which the land occupied in each parish produces, after the due allowances, is that upon which the occupier is to be rated in each (*f*). It is unnecessary to cite more authorities in support of a proposition now become settled; the decisions will be found to flow in a remarkably uniform current since the case last cited. . . . It is to be remembered that the amount of the assessment on a particular occupier is a question between that occupier and the rest of the contributors to the whole rate: and that the consideration of that occupier's relation to the contributors to another rate in another parish is irrelevant to this question; he may be rated in that other parish too high or too low; but this is a matter which does not interest the contributors to the first-named rate (*g*); nor have they influence

(*b*) 15 Q. B., at p. 360.

(*c*) It is extremely difficult to understand what is meant by the words "any matters specified in the section." Compare the *Amwell Spring Case*, *R. v. New River Co.* (1813), 1 M. & S. 503, *infra*, p. 268 (in which "value derived from extrinsic circumstances," and "profits received elsewhere," were taken into account), and *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, *supra*, p. 165, in which Lord DENMAN held that the parish officers ought to take into account "all the existing circumstances, whether permanent or temporary, *wherever situated*, however arising or secured, which would reasonably influence the parties to a negotiation for a tenancy as to the amount of rent to be asked or given."

(*d*) (1827), 7 B. & C. 236; but see the remarks on this case, *infra*, p. 342.

(*e*) But see the extract from *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, cited in note (*c*), *supra*. It is by no means clear that that passage agrees with *R. v. Kingswinford*, in which rateable value in each parish was made to depend solely on the profits earned in that parish.

(*f*) See the remarks on this sentence in Appendix I., *infra*.

(*g*) This sentence does not meet the real point, viz., that the *railway company* are interested in seeing that one and the same principle is applied to their line in every parish; for otherwise the rate on the whole *may* be far in excess of the true value. As was said by WIGHTMAN, J., in *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716, at p. 722, the Queen's Bench is bound to protect the occupier of an apparatus extending into several parishes from being rated beyond the rateable value of the whole taken together. COLERIDGE, J., in the *Brighton Company's Case*, seems not to have appreciated the real point raised by the company, for, in the course of the argument, he asked: "Why not take the mileage principle where they cannot find the *quantum* [of net profits] for the particular parish, and the parochial principle where they can?" See 15 Q. B., at p. 338.

in the settlement of it. And this suggests the answer to a difficulty raised on the argument in this case. 'If you give Croydon the full benefit of all the earnings made by the railway in the parish, what is to be done in the case of a parish on some branch line in which the company may work to a loss?' The answer is, that that case must be decided when it arises between the company and that parish on the same principle precisely as the present, without reference to Croydon (*h*). This is quite distinct, however, from the consideration of any expenses, wherever arising, which the occupier can show to be necessary for keeping the hereditament which is the subject of the assessment, at the value which is made the measure of it (*i*). The language of the statute is quite general on this point, and lets in all considerations which are necessary for the just protection of the company in each parish."

Remarks on the Brighton Company's Case.—The judgment in *R. v. London, Brighton and South Coast Rail. Co.* (*j*) may be taken to be the foundation of the modern practice in rating main lines of railway, and has never been expressly disapproved. It was expressly approved of in the second *Tilehurst Case* (*k*); but before we come to that case it may be as well to point out that in the *Brighton Case*, although it affirmed a rate based on the parochial earnings and parochial expenses of the line of railway to be rated, a saving clause was added, that "matters arising without the parish" which would affect the amount of the rent might be taken into account (*l*). Now this is merely another way of saying that "contributive value," and not the parochial net profits, may be made the basis of calculating rateable value. So that the very judgment, which is supposed to be the authority for adopting the "parochial principle" in rating railways, expressly permits the adoption of another principle which is in direct conflict with the parochial principle.

The judgment in *R. v. London, Brighton and South Coast Rail. Co.* appears to ignore the following considerations. The rateable value of the line of railway in Croydon, if calculated on the

(*h*) If this passage means that in all parishes rateable value must be calculated with reference to the net profits in each parish, so that the rateable value will vary in proportion to the net profits, it follows that in any parish in which there are no net profits, there can be no rateable value. But this conclusion is in direct conflict with *London and North Western Rail. Co. v. Cannock* (1863), 9 L. T. 325, *infra*, p. 213; see also *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *infra*, p. 220.

(*i*) This sentence is very obscure. The judgment appears not to realise that the principle on which expenses are distributed among the parishes is an essential part of the whole calculation which must affect every parish, and may determine in some parishes whether the company can be said to "work to a loss" or not. Compare the second *Tilehurst Case*, *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 397, 1085, *infra*, p. 206.

(*j*) (1851), 15 Q. B. 313.

(*k*) *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085; *infra*, p. 206.

(*l*) 15 Q. B., at p. 360, *supra*, p. 204. Compare the remarks of Lord CAMPBELL, C.J., in *Newmarket Rail. Co. v. St. Andrew's-the-Less, Cambridge* (1854), 3 E. & B. 94, at p. 113.

"mileage principle," instead of on the "parochial principle," would have been considerably reduced (*m*); so that the parochial section of the railway in Croydon was much more profitable than the average over the whole system. Now, if, in order to earn the larger profits in Croydon, it was necessary to continue to work the less profitable parts of the line; and if (as was very possibly the case) some branch was worked at a loss in order to contribute to the earnings of the main line, it follows that the occupier of the main line in Croydon could only get the large profits actually earned there, provided he also worked other parts of the same system at a less rate of profit, or perhaps even at an actual loss. Now these are "matters locally situated without the parish" (*n*) which would affect the amount of the rent of the line in Croydon; for the tenant (in the circumstances supposed) would not give so much rent as he would give if he had not to work a branch at a loss in another parish. But though the judgment expressly allows "matters locally situated without the parish" to be taken into account, it affirms a rate based on a calculation which ignored the existence of any such "matters locally situated without the parish."

Rightly or wrongly the *Brighton Company's Case* (*o*) has been understood in practice as establishing the "parochial principle" of calculating rateable value from the net profits earned in the particular parish. From what has been said above, it appears that the case did not really lay down that principle to the exclusion of all others. It did, however, negative the "mileage principle," which makes the rateable value of each parochial section of the railway bear the same proportion to the rateable value of the whole system as the length of line in the parish bears to the length of the whole system.

Application of the "parochial principle" in the second Tilehurst Case.—In *R. v. Great Western Rail. Co.* (*p*) the court delayed giving judgment in the hope "that Parliament might interpose to relieve the judges from the difficult position in which they were placed when called upon to administer the existing law with respect to the rating of railways," by laying down some new rule. But judgment was delivered without the fulfilment of the hope, which, indeed, still seems almost as far off as ever. In this case the appeal related to two and a half miles of a line which had at one time belonged to an independent company, but at the

(*m*) See 15 Q. B., pp. 314, 328.

(*n*) See 15 Q. B., at p. 360, *supra*, p. 204.

(*o*) (1851), 15 Q. B. 313.

(*p*) (1851), 15 Q. B. 379; (1852), *ibid.*, p. 1085; 21 L. J. M. C. 84; sometimes called "the second *Tilehurst Case*," to distinguish it from *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, *supra*, p. 202.

date of the rate formed a branch of the Great Western Railway, and had been incorporated with and made part of it. The Great Western Company worked the branch as part of their system, though some of the rolling stock, and some of the servants and officers, were appropriated to or exclusively employed on the branch. The parish officers had calculated the rateable value thus: They ascertained first the rateable value of the entire railway, "trunk and branches," by deducting from the total gross receipts the actual expenditure of the company (*q*), and an allowance for tenants' profits, the remainder representing the rateable value of the entire railway and the stations. Having deducted the rateable value of the stations (which were separately rated), the respondents assigned, as the rateable value of the line in Tilehurst, the same proportion of the rateable value of the entire railway as the gross receipts in Tilehurst bore to the gross receipts of the entire railway. The company contended that, assuming the rateable value of the entire railway to be the right basis of the rate in each parish, and that such rateable value had been rightly ascertained by the respondents, it ought to be distributed among the several parishes in the ratio of the net receipts, and not in the ratio of the gross receipts. They claimed that the rateable value should be calculated in the following manner: They took the gross receipts per mile in Tilehurst, and deducted therefrom the expenses of each mile, actual or estimated. Most of the estimated expenses were arrived at by taking a mileage proportion of the expenses *in the branch only* (which produced a larger deduction than if a mileage proportion of the expenses over the entire railway had been taken). Among the deductions was a mileage proportion of the rateable value of the stations *on the branch only*. The deductions claimed largely exceeded the receipts (*r*), and the branch was not in itself profitable; but it was profitable to the company as proprietors of the entire Great Western Railway, by reason of the increased traffic brought on the main line. The rateable value per mile of the line in Tilehurst (exclusive of stations), according to the respondents' method of calculation, was 300*l.*, but would be reduced to 254*l.*, if the additional deductions claimed by the appellants for renewals (*s*) were allowed: if the appellants' calculations were correct, the rateable value per mile was to be reduced to 30*l.* (*t*).

(*q*) The company claimed further deductions for renewals: this question is dealt with, *infra*, p. 260.

(*r*) The result was the same whether the disputed deductions for renewals (*vide infra*, p. 260) were allowed or not.

(*s*) *Vide infra*, p. 260.

(*t*) Probably this sum was taken as representing the value of the land for agricultural purposes before it was converted into a railway. Such a principle of valuation is logically indefensible: see *R. v. Everist* (1847), 10 Q. B. 178, at p. 207; *supra*, p. 159; and note (b) 15 Q. B. 395.

It was stated in the case that “the actual expenses of the company were not in the proportion of the actual gross receipts, either on the branch or throughout the entire railway; nor were such gross receipts or such expenses at one uniform rate per mile throughout the entire railway.” Consequently, it is clear that the respondents’ method of calculation was a total departure from the method approved of in *R. v. London, Brighton and South Coast Rail. Co. (u)*, for in that case the rate was based on the receipts and expenses of the particular parish, whereas in the *Tilehurst Case* the respondents, in calculating the rateable value of the entire railway, “trunk and branches,” had spread equally over every mile of the line, the unequal amounts of receipts and expenses of the whole railway; and had divided the rateable value thus ascertained in proportion to the gross receipts, thus ignoring the fact that the expenses in each parish did not vary in proportion to the gross receipts. The appellants in the *Tilehurst Case* had approached very closely to the principle of the *Brighton Company’s Case*, but the court held that neither the appellants’ nor the respondents’ method was right. The following extracts are taken from the judgment of Lord CAMPBELL, C.J. (x):

“Of the outgoings of a railway some are general, having no more connection with or influence on one part of the whole line than on any other, incurred for the sake of the whole line, and contributing to the profits everywhere. Of course these must be distributed, and to every mile must be apportioned some share, on whatever principle the apportionment is to be settled. Some, again, *seem* purely local; a tunnel here, an inclined plane there (we purposely mention striking and definite peculiarities) (y); yet even these are contributing to the earnings everywhere: without these the traffic on either side could have no existence. It would be wrong to set these wholly and exclusively against the receipts earned in the same part of the line. . . . How, then, are the deductions from the total gross revenue, which constitute the difference between it and the total net rateable value, to be apportioned so as to arrive at the actual sum which constitutes the rateable value of the two miles and a half? There is no difficulty in giving the first answer; indeed, principle and authority leave us no option, it must be done by acting on what is called the parochial principle. We are dealing with a parochial question, with one in which the interests of the several parishes on a line of railway are quite distinct. We are to ascertain what expenses are incurred in earning the gross receipts on the two miles and a half, what charges, parochial or otherwise, they are liable to, what is fairly to be deducted for tenants’ profits, and so on; the same process in kind is to be gone through with regard to the two miles and a half as would be with regard to the whole line, if that were all in

(u) (1851), 15 Q. B. 313; 20 L. J. M. C. 124, *supra*, p. 203.

(x) 15 Q. B., at p. 1089.

(y) It is not clear whether the expenses referred to are the expenses of maintaining the inclined plane, or tunnel, or the additional cost of working over, or through, them. It is submitted that different considerations may apply to the two classes of expenses: *vide infra*, p. 211.

one parish. This principle does not preclude a consideration of charges and expenses *wherever arising locally*, which are necessary for keeping the subject of assessment at the value which is made the measure of that assessment (z). . . . The appellants have, in fact, separated the branch from the trunk, except as to what they call a small portion of the general expenses of the entire railway, and then divided the expenses of the branch thus separated on the mileage principle. We do not think them necessarily wrong in this last particular."

Lord CAMPBELL, having stated that the company were not justified in separating the branch from the trunk, continued :

"We wish it to be distinctly understood that we come to this conclusion solely on the facts of this case. We are far from saying that there may not be cases in which two lines connected for many purposes, and worked by the same company, may yet have been kept so distinct by the statute or agreement which creates the connection, or by the circumstances under which they are worked, that, for the purpose of rating, they would have to be separately considered as two distinct subject-matters. . . . The respondents have taken the deductions at the same rate for every mile of the railway, for they say, as the gross receipts of one mile to the gross receipts of the whole, so the rateable value of one mile to the rateable value of the whole. This is, in effect, to strike off from the gross receipts of a mile an aliquot part of the sum which is struck off from the gross receipts of the whole, and assumes, at least, that the expenses are at one uniform rate throughout the whole line. [Lord CAMPBELL then referred to the finding (*supra*, p. 208) that the expenses and receipts were not uniform, and held that this finding excluded the adoption of the respondent's method of calculation]."

The latter part of the judgment, so far as it relates to the expenses of the maintenance of the permanent way, is confirmed by *London and North Western Rail. Co. v. Harborne* (a), in which it was held that the proper method of making a deduction for the maintenance of the permanent way was not to follow the mileage principle, but to take the actual outlay in the particular parish, and that this item was not to be varied in consequence of things in other parishes along the same railway. On the other hand, since this decision, in effect, directs that all expenses of maintenance of permanent way are to be treated as local expenses, it limits the expenses which can be treated as general expenses spread over the whole line.

Remarks on the second Tilehurst Case.—The judgment in the second *Tilehurst Case* (b), though it professed to follow the judgment in *R. v. London, Brighton and South Coast Rail. Co.* (c),

(z) See also *R. v. Coventry Canal Co.* (1859), 1 E. & E. 572, *infra*, p. 343.

(a) (1870), 34 J. P. 644.

(b) *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085.

(c) (1851), 15 Q. B. 313, *supra*, p. 203.

really departed from it. For in the *Brighton Company's Case* the rate affirmed by the judgment was based on the parochial earnings and expenses : and in the second *Tilehurst Case*, had the branch line been wholly in one parish, the separation of the branch from the trunk (which was the foundation of the appellants' calculation) would have carried out the "parochial principle" to the fullest extent, and would have made the calculation rest solely on the parochial earnings and expenses. But this separation of the branch from the trunk was held by the court to be wrong. It is true that in the judgment in the *Brighton Company's Case* (*d*), the court held that it would be permissible to bring into account matters "locally situated without the parish," but it does not appear that in making the rate the parish officers had brought any such matters into account.

The "parochial principle," as explained in the second *Tilehurst Case*, appears to be this : That the gross receipts in the parish are to be the starting-point ; and from these receipts are to be deducted expenses, though not necessarily the whole of the expenses, incurred within the parish (*e*) ; and some expenses (though not incurred within the parish) may have to be deducted if it can be shown that they "contribute to the earnings everywhere" (*f*) ; and a further deduction is to be made for tenants' profits. But a great difficulty in applying the principle (apart from the difficulty of distinguishing between local and general expenses) is met with in a parish where the working expenses (estimated on any principle of apportionment) are greater than the gross receipts in the parish. Inasmuch as the rateable value is represented by the gross receipts in the parish, subject to certain deductions, it follows that the rateable value of the line in any parish cannot possibly be greater than the gross receipts in the parish, and may be much less, until it disappears altogether. But the courts have never yet held that a line has no rateable value, even when the line has been worked at a loss. On the contrary, the court has held that a line worked at a loss may have a rateable value (*g*).

Distinction between local and general expenses.—In the second *Tilehurst Case* (*h*), Lord CAMPBELL draws attention to the fact that some railway expenses are "general, contributing to the profits everywhere" ; while others "*seem* purely local—a tunnel here, an inclined plane there" ; and adds that "even these

(*d*) See 15 Q. B., at p. 360, *supra*, p. 204.

(*e*) The question what expenses are to be regarded as spread over the whole line is considered *infra*, p. 211.

(*f*) See 15 Q. B., at p. 1089, *supra*, p. 208.

(*g*) See *London and North Western Rail Co. v. Cannock* (1863), 9 L. T. 325, *infra*, p. 213.

(*h*) *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085, *supra*, p. 208

are contributing to the earnings everywhere: without these the traffic on either side could have no existence." It appears that Lord CAMPBELL must have meant that *some* expenses not only seem, but are, purely local (*i*); but the judgment gives no test by which to distinguish between local and general expenses. But Lord CAMPBELL seems to leave unnoticed the distinction between the cost of maintaining the hereditament itself, and the cost of working the trains which run over that hereditament. The definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836, coupled with the definition of "gross estimated rental" in s. 15 of the Union Assessment Committee Act, 1862 (*k*), shows that, before arriving at the gross estimated rental, no deduction must be made for "the cost of repairs, insurance, and other expenses necessary to maintain [the hereditaments] in a state to command the rent"; and that the cost of these repairs, etc., must be deducted to find the "net annual value." Now the cost of the repairs and insurance of the hereditaments must mean the repairs and insurance of the same hereditaments of which the gross value has been ascertained, and must be limited to the repairs and insurance of the hereditaments (or parts of hereditaments) situated in the parish. If a house lying in one parish were held with a garden in an adjoining parish, but within the same curtilage, it would be impossible to claim to deduct part of the cost of repairing and insuring the house in order to arrive at the rateable value of the garden.

It is extremely difficult to understand what expenses are to be (according to the second *Tilehurst Case* (*l*)) regarded as general expenses (and therefore to be spread over the whole line) and what expenses are to be regarded as purely local expenses (and therefore to be charged against the receipts of the particular parish). Lord CAMPBELL gives as instances (*m*) of outgoings which "*seem* purely local," "a tunnel here, an inclined plane there." But it is not clear whether the outgoings referred to are the additional expenses of maintenance, or of working. As far as the writer's experience goes, the usual practice (*n*) with valuers is to charge the working expenses solely against the receipts of the parish where they are incurred. And the assessment

(*i*) Otherwise the result would be to spread the expenses over the whole line, which was the very thing done by the respondents and rejected by the court.

(*k*) The Acts referred to are set out in Appendix II., *infra*. The argument stated in the text is made still clearer by the definitions of "gross value" and "rateable value" in s. 4 of the Valuation (Metropolis) Act, 1869, which applies only to the "metropolis."

(*l*) *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085.

(*m*) See 15 Q. B., at p. 1089, *supra*, p. 208.

(*n*) We are not dealing with cases where the rateable value is calculated from some payment in the nature of rent paid by one company to another: those cases are dealt with *infra*, pp. 212, 213.

sessions in *Midland Rail. Co. v. St. Mary, Islington* (o), held that where working expenses were increased in the parish of Islington by causes affecting the traffic after it had passed outside the parish, the extra expenses incurred in Islington were rightly taken into account in rating the line in that parish. On the other hand, a claim is sometimes made to spread the expenses of maintaining a tunnel (or a bridge) over the whole line (p), and as a reason for doing so it is said that if all the expenses of maintaining the tunnel (or bridge) were charged against the receipts of the parish where they were incurred, there would be no rateable value left. But this argument assumes that the calculation of rateable value must commence with the receipts in the particular parish (q), as was held in *R. v. London, Brighton and South Coast Rail. Co.* (r), and *R. v. Great Western Rail. Co.* (s). But we shall find when we come to decisions which make "contributive value" a guide to ascertain rateable value, that the receipts earned in the particular parish have been partially, or entirely disregarded (t).

Conflict of decisions as to the adoption of the "parochial principle."—In 1854 a conflict of decisions began, the effect of which may be summarized here before dealing with the decisions in detail. In *Newmarket Rail. Co. v. St. Andrew's-the-Less, Cambridge* (u), it was held by the majority of the court (x) that in rating a branch line which was worked at a loss it was not permissible to take into account a sum paid to the company in occupation, by way of guarantee by another company occupying the main line with which the branch communicated, the consideration for the payment being the traffic brought by the branch to the main line. But in the following month, in *South Eastern Rail. Co. v. Dorking* (y), it was held by the majority of the court (z)

(o) Ryde's Rat. App. (1886—1890), 139, at p. 146.

(p) See *South Eastern Rail. Co. v. Greenwich Union* (1881), Ryde's Met. Rat. App. 296. In *London and North Western Rail. Co. v. Harborne* (1870), 34 J. P. 644, the Queen's Bench held that, for the maintenance of the permanent way, the actual expenses in the parish must be deducted: *vide supra*, p. 209.

(q) The facts may be used in support of a contrary argument, thus: If the cost of repairing a hereditament swallows up all receipts earned on the hereditament, which still has a rateable value, it cannot be right to begin with the receipts and make deductions for working expenses and repairs in order to arrive at rateable value. The question is further considered in Appendix I.

(r) (1851), 15 Q. B. 313, *supra*, p. 203.

(s) (1852), 15 Q. B. 379, *supra*, p. 206.

(t) See *South Eastern Rail. Co. v. Dorking* (1854), 3 E. & B. 491, *infra*, p. 216; *London and North Western Rail. Co. v. Cannock* (1863), 9 L. T. 325; *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *infra*, p. 220; *London and North Western Rail. Co. v. Irthlingborough* (1876), 35 L. T. 327, *infra*, p. 223.

(u) (1854), 3 E. & B. 94, *infra*, p. 214.

(x) ERLE and COLERIDGE, JJ., *dissentiente* Lord CAMPBELL, C.J.

(y) (1854), 3 E. & B. 491, *infra*, p. 216.

(z) Lord CAMPBELL, C.J., COLERIDGE and CROMPTON, JJ., *dissentiente* ERLE, J.

that in rating a branch line of which the South Eastern Company were lessees at a fixed rent, it was right to take into account the value of the branch as a feeder to the main line, and the payment of the agreed rent by the South Eastern Company; and that the rateable value ought not to be calculated solely with reference to the profits made on the branch. This decision, in effect, departs entirely from the "parochial principle" (a), since it brings into account profits earned in other parishes, and the rent paid in order to secure those profits. The decision was confirmed in *London and North Western Rail. Co. v. Cannock* (b), which related to a branch line let to the North Western Company at a rent of 5,500*l.* in perpetuity: the branch was worked at a loss, but was valuable in that it brought traffic on to the main line. It was held that the rateable value must be calculated by ascertaining what was the value of the branch to the North Western Company, taking all its advantages into consideration. The current of decisions was setting strongly against the adoption of the "parochial principle," but it turned again in *Great Eastern Rail. Co. v. Haughley* (c), which was confirmed by *R. v. Llantrissant* (d). In both these cases it was held that the rateable value of a line of railway in a particular parish depended on the earnings and expenses in that parish, the "parochial principle" being thus followed very strictly. But that principle was again disregarded in *R. v. London and North Western Rail. Co.* (e) and in *London and North Western Rail. Co. v. Irthlingborough* (f), the effect of which decisions is as follows: In rating a line of railway, the rent which a tenant will be willing to give for it must be taken into account, even though the rent be given on account of matters arising outside the parish, and though the line within the parish be worked at a loss. And the authority of these cases seems to be confirmed by the decision of the Court of Appeal in *North and South Western Junction Rail. Co. v. Brentford Union* (g), that in rating a line, which was let to

(a) The decision, in effect, confirms a case very briefly reported (*R. v. Eastern Counties Rail. Co.* (1854), 23 L. J. M. C. 96 n.; 18 Jur. 679 n.; 7 Rail. Cas., 900 n.) in which it was held that, in rating a branch line which was worked at a loss, but for which a rent was paid, the rent (though an important element in the calculation) was not the sole criterion of rateable value. If the "parochial principle" had been strictly followed, and the line were rated on the net profits earned in the parish, the line would have had no rateable value and the rent would have been no criterion at all.

(b) (1863), 9 L. T. 325.

(c) (1866), L. R. 1 Q. B. 666, *infra*, p. 219. The judgments ignore the *Dorking Case*, and *R. v. Eastern Counties Rail. Co.* and *London and North Western Rail. Co. v. Cannock* (cited above) are not even mentioned in the arguments.

(d) (1869), L. R. 4 Q. B. 354; *S. C. sub nom. Great Western Rail. Co. v. Llantrissant*, 33 J. P. 613; *infra*, p. 220.

(e) (1874), L. R. 9 Q. B. 134; *S. C. sub nom. R. v. Bedford Union*, 43 L. J. M. C. 81, *infra*, p. 220.

(f) (1876), 35 L. T. 327; 40 J. P. 790, *infra*, p. 223.

(g) (1887), 18 Q. B. D. 740, *infra*, p. 225. The decision of the House of Lords (13 App. Cas. 592), which sent the case back to the arbitrator, seems to leave the decision of the Court of Appeal on this point untouched.

three companies who jointly used it, it was wrong to calculate the rateable value in a particular parish from the earnings and expenses in that parish ; although that might be a right method in the case of a railway used throughout as one railway by one company.

The effect of the cases above cited appears to be as follows : In the ordinary case of a line, owned and occupied by one and the same company, and worked by them at a profit, the rateable value in each parish is to be calculated from the receipts and expenses in that parish ; but in the case of a line held under a lease, or of a branch line worked at a loss in order to earn profits in another parish, the rent paid by the occupier, or the profits which this occupation enables him to earn in another parish, may properly be taken into account.

It appears to the writer that these decisions are not reconcilable, and (if strictly followed) work injustice to railway companies. For if in rating a main line worked at a profit, *all* the profits earned on the main line are brought into account, while in rating a branch line worked at a loss in order to earn additional profits made on the main line, those additional profits (or the rent which would be given for the branch in order to earn those profits) are brought into account, the conclusion seems inevitable that the same profits are taken into account twice over, and part of the value of the whole system—represented by the additional profits earned on the main line—is rated twice over (*h*).

Line worked under a guarantee: the Newmarket Railway Case.—In *Newmarket Rail. Co. v. St. Andrew's-the-Less, Cambridge* (*i*), the Newmarket Railway Company agreed with the Eastern Counties Company to complete a branch communicating with the latter company's main line at Cambridge : and the Eastern Counties Company bound themselves (whenever the earnings of the Newmarket Company over their whole line should prove insufficient to pay a dividend of three per cent. on their capital) to make good the deficiency, to an extent not exceeding 5,000*l*. The working expenses of the branch exceeded the gross receipts thereon ; and the net receipts of the Newmarket Company (from their whole line) being insufficient to pay a dividend of 3 per cent., the Eastern Counties Company in the year immediately preceding the rate appealed against paid 3,705*l*. to make up the deficiency. It was held by COLERIDGE and ERLE, JJ. (Lord CAMPBELL dissenting), that in rating the branch the payment under the guarantee ought not to be taken into account.

The judgments of ERLE and COLERIDGE, JJ., will (if carefully examined) be seen to be based upon the assumption that a railway

(*h*) This subject is further considered in Appendix I.

(*i*) (1854). 3 E. & B. 94.

company are to be rated for their profits ; and that the amount of the profits is the measure of the rateable value. On this assumption, all that remained to be determined was the question whether the payment made under the guarantee constituted part of the profits of the occupation. But before this question need be asked, we may dispute the previous assumption. A railway company are rateable, not for their profits, but for their land : and the measure of value is not the profit to be made out of the land, but the rent which would be given for it. ERLE, J., says : “ If the railway was let, the amount of rent would depend on the amount of annual profit to be made therefrom.” Now, this is a statement of fact, which (it is submitted) was clearly untrue. It seems plain from the report that the Newmarket Company (in order to earn the guaranteed sum) must work the branch line : they did in fact so work it in order to earn that sum : why then, regarding the Newmarket Company as a possible tenant of the branch (*k*), are we to leave out of consideration the real object of their occupation, and to say that “ the amount of rent would depend on the amount of annual profit to be derived ” from the branch line, when in fact the Newmarket Company continued in occupation notwithstanding the entire absence of profit ? Again, suppose the Eastern Counties Company be regarded as possible tenants of the line (*l*) : it seems clear that they might be expected to give a substantial rent for the branch, notwithstanding the absence of profits thereon, inasmuch as they were willing to guarantee an annual payment to the Newmarket Company in order to induce that company to make and work the branch. No matter how great the profits on the branch, the Eastern Counties Company would get none of them, as long as the branch was occupied by the Newmarket Company : it is plain, therefore, that the Eastern Counties Company must have expected additional profits to accrue on the main line from the working of the branch. If they were willing to pay another company to work the branch, why might they not be supposed to give a rent and work it themselves—the object of the payment of the guaranteed sum, or of the rent, being the creation of additional profits on the main line ? Of course, if these profits are to be left out of consideration in rating the branch line, then the judgment of ERLE and COLERIDGE, JJ., can be supported ; but (it is submitted) not otherwise.

It may, perhaps, be said that in *Newmarket Rail. Co. v. St. Andrew's-the-Less, Cambridge* (*m*), the question whether “ contri-

(*k*) The actual occupier must be taken into account as a possible tenant : see *R. v. School Board for London* (1886), 17 Q. B. D. 738, *supra*, p. 154.

(*l*) An hypothesis similar to this was made the ground of the decision in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *infra*, p. 220.

(*m*) (1854), 3 E. & B. 94.

butive value " could be taken into account was not really raised ; and that all that the majority of the court decided was, that the payment under the guarantee was not part of the profits of the occupation. There is no doubt that a payment made to the owner of property, as owner, and not as occupier, cannot be regarded as part of the value of the occupation (*n*). Thus, in *Shropshire Union Railway and Canal Co. v. Lapley* (*o*), the appellants granted a lease of their railways and canals to the London and North Western Railway Company, who were to pay by way of rent a fixed rate of interest on the capital of the appellants' company. The appeal related only to a part of the canals which were (according to the lease) to be worked by a joint committee of the appellants and the North Western Company, but in the name of the appellants. The portion of the canal in question, if rated on the net profits in the parish, was found to be worth 75*l.* : but, if the rent paid under the lease were taken into account, was found to be worth 317*l.* The question was, whether the rent could be taken into account. BLACKBURN, J., said :

" The question depends on the true relation between the two companies. This rent received from the London and North Western Railway Company is due to the appellants *qua* owners, and not *qua* occupiers, and therefore is not to be taken into account as part of the rateable value."

Here, again, no exception can be taken to the answer given by the court: but the wrong question was asked. The question should have been: " In considering what rent a tenant may be expected to pay for this piece of canal, is it right to take into account the fact that the North Western Company pay a rent for the whole, sufficient to support a rent of 317*l.* for this part?" This question, it is submitted, must have been answered in the affirmative (*p*). Had the North Western Company been the actual occupiers there could have been no doubt: and the fact that the Shropshire Union Company retained some control in the management of the canal, by appointing some of the members of the joint committee by whom it was worked, cannot (it is submitted) affect the rent for which the canal would let.

Rent paid for a leased line: the Dorking Case.—In *South Eastern Rail. Co. v. Dorking* (*q*), the South Eastern Company had taken a lease at a fixed rent for one thousand years of the line from Redhill to Reading (which was constructed by an indepen-

(*n*) Cf. *R. v. Aire and Calder* (1832), 3 B. & Ad. 533, *infra*, p. 339.

(*o*) (1868), 32 J. P. 791. The case is reported somewhat differently, *sub nom. R. v. Overseers of Lapley* (1868), 9 B. & S. 568.

(*p*) A similar question was subsequently so answered by BLACKBURN, J., in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *infra*, p. 222, and had already been answered in the same way in *South Eastern Rail. Co. v. Dorking* (1854), 3 E. & B. 491, *infra*, p. 218.

(*q*) (1854), 3 E. & B. 491.

dent company). By a subsequent Act the line was amalgamated with the remainder of the South Eastern Company's system, the independent company was dissolved, and the shareholders of that company were to receive (in lieu of the rent payable under the lease) perpetual annuities of the same amount from the South Eastern Company. The net earnings on the Reading line were less than the rent payable under the lease, less the statutory deductions: and were therefore also less than the substituted annuities. But the case found that the Reading line brought a great deal of additional traffic to the main line of the South Eastern Company: that the latter company thus derived benefit from the Reading line as a feeder to the main line; and that the Reading line, if in the market, might be an object of competition in consequence of the spirit of rivalry existing between the South Eastern Company and other companies, the traffic on the main lines of which would be increased by the possession and control of the Reading line. Two rates upon part of the Reading line in the parish of Dorking were appealed against, one being made during the continuance of the lease, the other after the amalgamation of the Reading line with the South Eastern system. If the rent under the lease (or the annuities under the subsequent Act) were the proper criterion of rateable value, the rates were to be confirmed. The court were asked to decide (1) whether the rates ought to be confirmed; or (2) whether the South Eastern Company were liable to be assessed in respect only of the net profit derived from the traffic passing through Dorking, irrespective of any rent, and of the value of the Reading line as increasing the traffic on the main line; and (3) whether the overseers were entitled to take into account the value of the line as an integral part of the South Eastern Railway, in addition to the net profit as derived from the traffic passing through Dorking.

The court were unanimous in holding the rent (or the annuities) not to be conclusive of the rateable value. COLERIDGE, J., said (*r*):

"The rent agreed for and paid may be always taken as evidence, more or less strong according to circumstances, of that supposed rent from which, by the statute, the rateable value is to be arrived at; and being evidence on one side, if there be nothing to set against it, it may be of course conclusive. Still it is only evidence; and where there are any other circumstances in the case to influence the inquiry, it never can be looked to solely and conclusively" (*s*).

(*r*) 3 E. & B., at p. 508.

(*s*) *R. v. Eastern Counties Rail. Co.* (1854), 7 Rail. Cas. 900 n.; 18 Jur. 679 n.; 23 L. J. M. C. 96 n., *vide supra*, p. 213, note (*a*). See also *East London Railway Joint Committee v. Greenwich Union*, Ryde's Rat. App. (1886—1890), 210, at p. 219, *infra*, p. 223; and *East London Railway Joint Committee v. Greenwich and St. Olave's Unions* (1902), Ryde & Konstam's Rat. App. (1894—1904).

But upon the other questions the judges differed in opinion, CROMPTON, COLERIDGE, JJ., and Lord CAMPBELL, C.J., holding that the value of the line as a "feeder" could be taken into account, ERLE, J., holding that it could not. CROMPTON, J., said (*t*) :

"The value of the branch, as a feeder, is to be taken into account in ascertaining the rateable value. It is a profit derived from the occupation of the land ; and it seems to me impossible to say that the value to the persons willing to take the line, or the rent likely to be got from them would not be increased by the advantage of this line to, and from its being a feeder of, the larger railway. The value of the land in the parish is increased and enhanced by its being useful as increasing the profit that may be made in another place : and I think that the rateable value within the parish may clearly be enhanced by matters in another parish."

And Lord CAMPBELL, C.J., said (*u*) :

"The liability of the appellants to be assessed in the parish of Dorking cannot be confined to the net profit derived by the appellants from the traffic passing through that parish. They are only to be assessed in that parish in respect of property occupied by them in that parish ; but its value in the parish may be enhanced by circumstances existing out of the parish. The appellants say truly that they are not to be rated in this parish for profits made elsewhere. I wish implicitly to abide by what is called the 'parochial principle' of rating. But, upon that principle, we must see of what value the property rated in the parish is to the occupiers ; and this is not necessarily determined by the pecuniary receipts for the use of it within the parish. . . . In estimating their profits in the parishes through which the main line passes there ought to be a deduction in respect of what is paid for the line which is worked as a feeder to the main line."

Remarks on the Dorking Case.—As the decision in *South Eastern Rail Co. v. Dorking* (*x*) has been followed in *London and North Western Rail. Co. v. Cannock* (*y*), *R. v. London and North Western Rail. Co.* (*z*), and *London and North Western Rail. Co. v. Irthlingborough* (*a*), and may be taken as the foundation of the principle now accepted as good law, it may be as well to notice the full effect of the decision.

Although Lord CAMPBELL, C.J., in *South Eastern Rail. Co. v. Dorking* (*b*) stated that he decided to abide by the "parochial principle," it is doubtful whether his judgment (and those of the judges who agreed with him) can be reconciled with the "parochial principle" as it was stated in the earlier cases. For

(*t*) 3 E. & B., at p. 499.

(*x*) (1854), 3 E. & B. 491.

(*u*) 3 E. & B., at p. 513.

(*y*) (1863), 9 L. T. 325, *supra*, p. 213.

(*z*) (1874), L. R. 9 Q. B. 134 : *S. C. sub nom. R. v. Bradford Union*, 43 L. J. M. C. 81 : *infra*, p. 220.

(*a*) (1876), 35 L. T. 327, *infra*, p. 223.

(*b*) See 3 E. & B., at p. 514, *supra*.

in *R. v. London, Brighton and South Coast Rail. Co. (c)*, and in the second *Tilehurst Case, R. v. Great Western Rail. Co. (d)*, rateable value in each parish is made to depend on the gross receipts in that parish, from which certain deductions are to be made: so that rateable value in each parish cannot be more, and may be much less, than the gross receipts in that parish. But in the *Dorking Case*, Lord CAMPBELL expressly says that the value of the line in the parish "is not necessarily determined by the pecuniary receipts within the parish," and that the value may be greater than the net profit from traffic upon it. If this be so, it may easily happen that the rateable value in a particular parish may be greater than the gross receipts in that parish, which according to the earlier cases above cited could not possibly happen.

If it had not become common among railway companies to grant and take leases of branch lines, possibly the "parochial principle" as stated in *R. v. London, Brighton and South Coast Rail. Co.* would never have been questioned. But in *South Eastern Rail. Co. v. Dorking*, and other similar cases, the court had to face this difficulty:—the problem is to ascertain what rent a tenant may reasonably be expected to pay for the line in this parish: the actual tenant pays, and is willing to pay, a larger rent than the net receipts in the parish warrant: why should the rent which a hypothetical tenant might be expected to pay be limited by the net receipts in the parish, when the rent paid by the actual tenant is not so limited? The subsequent cases seem to show that the argument suggested by this question is unanswerable (*e*).

Contributive value of branch lines: the Haughley and Llantrissant Cases.—In *Great Eastern Rail. Co. v. Haughley (f)* and *R. v. Llantrissant (g)*, the Queen's Bench held that, in rating a branch line, "contributive value" must be excluded from consideration, and that rateable value must be based on the receipts and expenses in each parish. In *Great Eastern Rail. Co. v. Haughley*, the appeal related to a branch line forming part of the Great Eastern Company's system, the rateable value being ascertained by deducting from the receipts in the parish the expenses (actual or estimated) incurred in the parish. The respondents contended that the deductions were too great, because the expenses

(*c*) (1851), 15 Q. B. 313, at p. 361 (*vide supra*, p. 204), COLERIDGE, J., said: "The value which the land occupied in each parish produces, after the due allowances, is that upon which the occupier is to be rated in each," and "value" is clearly here used in the sense of "parochial earnings."

(*d*) (1852), 15 Q. B. 379, 1085, *supra*, p. 206.

(*e*) See, especially, the judgment of BLACKBURN, J., in *R. v. London and North Western Rail. Co. (1874)*, L. R. 9 Q. B. 134, *infra*, p. 221.

(*f*) (1866), L. R. 1 Q. B. 666.

(*g*) (1869), L. R. 4 Q. B. 354.

incurred in the parish (where the traffic was small) in effect helped to earn the receipts in other parishes, where the traffic was greater and the expenses consequently less in proportion to the receipts. But the court held that the additional profit earned by the accession of traffic in other parishes was "an accident to be assigned to the benefit of those parishes in which the accession of traffic took place, and not to a parish which had nothing to do with it" (*h*). This decision was expressly affirmed in *R. v. Llantrissant*, which related to part of a line let to the Great Western Company at a fixed rent (*i*). The line brought a considerable amount of traffic to the Great Western main line, and was a "feeder" to that main line. The only question was whether the value of the traffic contributed to the main line by the line in Llantrissant ought to be taken into consideration, and the Queen's Bench held that it ought not. MELLOR, J., said (*j*) :

"The rateable value in each parish of a line of railway passing through several parishes must depend on the actual earnings of the part of the railway within the particular parish, deducting the actual expenses of that part. Some difficulties have been introduced by confounding the hypothetical tenant with the actual tenant; it is not because a particular tenant will give a large sum as rent that that is any criterion of the rateable value" (*k*).

Branch line for which several companies would compete.—

We now come to the case, *R. v. London and North Western Rail. Co.* (*l*), which has never been overruled, and which in effect determined that in valuing a branch line, it is necessary to take into account "contributive value," that is, the value which the branch has by reason of its capacity for contributing to the profits which may be earned on other lines in other parishes. The appeal related to part of a branch line extending from Cambridge to Bletchley, where it communicated with the main line of the North Western Railway. At different places it communicated with the main lines of the Midland, Great Northern, and Great

(*h*) This sentence seems to involve an assumption which was apparently untrue in fact. If the expenses in Haughley helped to earn the receipts in other parishes where the traffic was greater, the parish of Haughley "had something to do with" the additional profit earned in those parishes.

(*i*) The rent paid for the whole line (of which about three-quarters lay in the parish of Llantrissant) was £4,000 a year; the rateable value in Llantrissant, found by the sessions and confirmed by the Queen's Bench, was 270*l*.

(*j*) L. R. 4 Q. B., at p. 357.

(*k*) But see *R. v. School Board for London* (1886), 17 Q. B. D. 738; Ryde's Rat. App. (1886—1890) 235 (*supra*, p. 154), where the Court of Appeal held that the actual occupier of premises must be taken into account as a possible hypothetical tenant. This decision was approved by the House of Lords in *London County Council v. Erith and West Ham*, [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 382.

(*l*) (1874), L. R. 9 Q. B. 134; *S. C. sub nom. R. v. Bedford Union*, 45 L. J. M. C. 81.

Eastern Railways. The line, which had been originally made by independent companies, was vested in the North Western Company, the shareholders of the former companies becoming stockholders of the North Western Company, and receiving a guaranteed interest on the capital expended upon the line. The sums so guaranteed, if regarded as rent, and taken as the basis of rateable value, would have given a much larger value than that contended for by the appellants. In order to compete with the Midland, Great Northern, and Great Eastern Companies, the North Western Company charged the same fares to London as those companies, being lower fares per mile than those charged over the rest of the North Western system. The appellants treated the branch as part of the North Western system, and apportioned the fares paid for travelling over the branch line to London equally over the whole distance travelled, and deducted the expenses (where practicable) for each particular mile. The case contained the following finding :

“ If the [branch] line were now in the market, either of the three companies [the Midland, the Great Northern, and Great Eastern] would, in consequence of the traffic which it would bring to their line, be willing to acquire it upon the same terms in every respect as those upon which the appellants hold it. If so acquired by either of such other companies, they would work it in a similar manner to that in which it is now worked by the appellants ; and under such circumstances the traffic upon it would not produce a higher rateable value calculated upon the principle now contended for by the appellants than what it now produces. The respondents contend that the above circumstances must be taken into consideration in estimating the rateable value of the appellants’ line.”

It will be noticed that the appellants’ method of calculation followed strictly, while the respondents’ contention departed from the “ parochial principle ” of calculating rateable value from the net receipts in the parish. The court adopted the respondents’ contention, and BLACKBURN, J., said (*m*) :

“ In letting a thing from year to year, the rent would be regulated by two matters, on the one hand by the benefit (*n*) the tenant would be likely to derive from the occupation : because he would not give more than that ; on the other hand, by the nature of the property, such as its local situation, or how many persons there are who could supply him with an equally eligible thing, and be willing to let it to him : for while he would not be willing to give more than he expected to make by it, he would not even give that if he could get a similar thing at a lower rent. In the case in which we gave judgment the other day (*o*), we instanced the case of chambers in one of the Inns of Court. They are let at a higher rent than they would fetch elsewhere because

(*m*) L. R. 9 Q. B., at p. 144.

(*n*) Note that “ the benefit ” is not limited to the profit earned in the parish.

(*o*) *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84.

they give facilities to gentlemen to carry on the profession of barristers. And if the Attorney-General could only get one set of chambers to carry on his business, he would probably give an enormous rent for them ; but it so happens that there are a great many sets of chambers, and the rent the Attorney-General gives is just the same as that given for a similar set by a gentleman only called yesterday. So then the rent is given because the chambers afford facilities for carrying on the business ; but the rent is not given according to the profits made, and the man who makes nothing gives just as much as the man who is making thousands a year. [BLACKBURN, J., then referred to the *Amurell Spring Case*, *R. v. New River Co.* (p), and *Allison v. Monkwearmouth* (q), as showing that the value of the occupation is to be considered as enhanced by the matters to which it would give facility, and that it was immaterial ‘whether the enhanced value came from a thing out of, or within, the parish.’ He next referred to the finding set out above (r) that each of the three other companies would be willing to acquire the branch line ‘on the same terms as the appellants,’ and continued :] Now those terms are in perpetuity. If I took the view that that statement means what they would give only to buy the railway in perpetuity, and not that which they would be willing to pay for it from year to year, supposing, contrary to fact and contrary to what is likely to happen, the appellants offered to let it from year to year, I should say the parties had not given the court the right test ; because a company might well give for the railway in perpetuity a much larger sum in proportion than they would give for it from year to year. I do not think the statement can mean that ; it must mean to state something that would be taken into account if the railway were lettable from year to year for occupation each year. If that be the meaning I cannot help thinking that the rent to be obtained for letting it would be enhanced by the fact that there were four competitors who would be willing to take it. I do not think that the whole of what would be given as rent from year to year is necessarily to be taken, still less what it would let for in perpetuity ; but I think the fact that there are those competitors who would be willing to bid for it, is an element to be taken into consideration in estimating the annual value.”

In this case it was not necessary to determine what ought to be the effect in money value of taking into consideration the rent which competing tenants would be willing to give. This question was subsequently held to be a question of fact for the sessions, not a question of law for the High Court (s).

It must be specially noticed that in *R. v. London and North Western Rail. Co.* (t) there was no suggestion that the branch line, at the date of the rate appealed against, was not of the same value to the appellants as it was when they acquired the line. Where a company acquire a branch line in consideration of payments which a change in circumstances, or experience in the working of the line, shows to be too high, the payments actually made by the

(p) (1813), 1 M. & S. 503, *infra*, p. 268.

(q) (1854), 4 E. & B. 13 ; 23 L. J. M. C. 177.

(r) *Supra*, p. 221.

(s) *Vide infra*, p. 226.

(t) (1874), L. R. 9 Q. B. 134.

company are no more the criterion of rateable value, than the rent payable under a lease of a dwelling-house which has altered in value is the criterion of its rateable value (*u*). So in *East London Rail. Co. v. Greenwich Union* (*x*), at the London Quarter Sessions, a case relating to a line held under a lease, and very similar to *R. v. London and North Western Rail. Co.*, the chairman (Sir P. H. EDLIN, Q.C.) said :

“The rent payable under the lease may be evidence of rateable value, but is not the conclusive criterion—not the sole basis of calculation. We try the case on the assumption that the appellants may be able to show that the rent is not the true basis. It is open to them to adduce evidence to show that the rent agreed to be paid was a misconception, and that, if the agreement had to be made again, a different rent would be given.”

Branch line worked at a loss, but increasing the traffic on the main line.—In *London and North Western Rail. Co. v. Irthlingborough* (*y*), the North-Western Company were occupiers of a branch line in a district in which the Great Northern and the Midland Companies had competing lines. The gross earnings of the branch within the parish were more than absorbed by the working expenses, plus the deduction allowed by the Parochial Assessments Act. The first finding of the quarter sessions was that “if the appellants were willing to let the [branch] line, it might reasonably be expected to fetch a yearly rent equal to 45 per cent. of the gross receipts, the tenant paying all expenses of working and maintenance, as is customary in the cases of ‘working agreements’ between railway companies.” The respondents’ third contention was that, “when, as in this case, there are no direct rateable profits, the line is liable to be rated on the basis of the receipts derived from the enhancement of the traffic on the other parts of the system.” And the Queen’s Bench held that this contention, coupled with the first finding of the quarter sessions, was “perfectly right,” and that this was the test of the hypothetical tenant’s rent: and BLACKBURN, J., added that the court were not asked to, and did not, decide “how this enhancement of traffic should be apportioned between various parishes.”

This decision, it will be observed, confirms *London and North Western Rail. Co. v. Cannock* (*z*), and *R. v. London and North Western Rail. Co.* (*a*), and these three cases taken together appear to establish (beyond all question) the proposition that in rating a branch line, “contributive value” can be taken into account.

(*u*) *Cf. R. v. Skingle* (1798), 7 T. R. 549 (*supra*, p. 155), with *R. v. Bedworth* (1807), 8 East, 387, *supra*, p. 159.

(*x*) *Ryde’s Rat. App.* (1886—1890) 210, at p. 219.

(*y*) (1876), 35 L. T. 327.

(*z*) (1863), 9 L. T. 325, *supra*, p. 213.

(*a*) (1874), L. R. 9 Q. B. 134, *supra*, p. 220.

Railway held with a dock worked at a loss: the Grimsby Dock Case.—Although the case of *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor Union* (b) relates to the rating of a dock, not of a railway, it may be conveniently cited here, as indicating in what way “contributive value” must be taken into account. The appeal related to the Great Grimsby Docks, which were vested in the appellants. In the case stated by the arbitrator to whom the appeal was referred, it was found that 1,500,000*l.* had been expended on the docks; that the great bulk (but not all) of the imports and exports of the docks were carried over the appellants’ railway, and they received an annual sum of over 275,000*l.* in respect of such traffic. The railway and dock undertakings were worked as one concern. The dock charges were below the maximum permitted by the special Act, and were below the expenditure on the maintenance and management of the dock property. Having regard to existing competition, the charges were as high as could reasonably be made, and were the dock undertaking to be abandoned, the property of the appellants would be greatly depreciated as a whole, and their dividends would be considerably reduced. The appellants contended that the dock undertaking (either excluding or including the warehouses and sidings immediately adjoining the docks themselves) should be rated on its net earnings; in which case the rateable value would be reduced to 6,914*l.* or 566*l.*, according as the docks proper were rated separately or not.

The respondents contended “that the rateable value of the premises is the fair amount which a tenant from year to year, including among other possible tenants the railway company itself, would give one year with another for the premises, subject to the proper deductions for keeping them in a tenantable state of repair, and having regard to their being an adjunct to the railway, and to their capacity of being worked in connection therewith.” If this contention were correct, the rateable value was found to be 22,500*l.* The arbitrator found that in fixing this value he assumed that the docks were in the hands of a private person who would have to let them to, or make a working agreement with, a railway company; that the appellants would be the most likely tenants; and that, if they refused, another company would become the tenants at the estimated rent; but that such other company must obtain the necessary powers, or construct a new line, in order to obtain access to the docks. On these findings the Queen’s Bench Division gave

(b) Not reported; the case was decided in the Queen’s Bench Division on June 28th, 1886; in the Court of Appeal on July 29th, 1886; and in the House of Lords on July 1st, 1887. A short note of the decision of the Court of Appeal will be found in 2 T. L. R. 878; and of the House of Lords in the Times newspaper for July 2nd, 1887. The writer has collected the information given in the text from the print of the proceedings in the House of Lords.

judgment for the respondents on the authority of the *Anwell Spring Case* (c), and *R. v. London and North Western Rail. Co.* (d), and this decision was affirmed by the Court of Appeal, and by the House of Lords (e).

It will be noticed that in this case, the courts really decided no point of law, because the findings of the arbitrator put the appellants out of court. Still, the case is instructive as showing what facts render it necessary to take into account "contributive value" (f). It is submitted that in some of the earlier cases (g), in which the rateable value was held to be limited by the profits earned in the parish, if the true facts had been fully found, the courts would not have excluded "contributive value" from consideration.

Leased line: value of a "link" between other lines.—In *North and South Western Junction Rail. Co. v. Brentford Union* (h), the appeal related to a line somewhat similar to that to which *R. v. London and North Western Rail. Co.* (i) related. The line in question was constructed by the North and South Western Junction Company, and formed a connecting link between the South Western Railway and the Great Western Railway, the Midland Railway, and the North Western Railway, the latter railway being in connection with the North London Railway. After being occupied for some years by the Junction Company, the line was let (k) in perpetuity at a fixed rent to three companies, viz., the North Western, the Midland, and the North London Companies, to be worked by those three companies, by means of a joint committee. The appellants contended that the line should be regarded as an integral portion of the systems of the three companies, and that the rateable value should be ascertained solely with reference to the receipts and expenses within the parish (l). If this contention were correct, the rateable value appealed against was to be materially reduced. The respondents

(c) *R. v. New River Co.* (1813), 1 M. & S. 503, *infra*, p. 268; which decided that an occupation may be enhanced by profit made elsewhere.

(d) (1874), L. R. 9 Q. B. 134, *supra*, p. 220.

(e) This decision, in effect, overrules the decision of the Railway Commissioners in *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (1874), 2 Nev. & Mac. 53, that docks, wharves, etc., showing no surplus of receipts over expenses should be rated at the value of unimproved land.

(f) Compare the findings of fact in *North and South Western Junction Rail. Co. v. Brentford Union* (1888), 13 App. Cas. 592, *infra*, p. 226. Note also that in that case the House of Lords decided that the special case raised questions of fact only.

(g) For instance, *R. v. Llantrissant* (1869), L. R. 4 Q. B. 354, *supra*, p. 220.

(h) (1888), 13 App. Cas. 592.

(i) (1874), L. R. 9 Q. B. 134, *supra*, p. 220.

(k) The decision of the Queen's Bench that the effect of the lease was to make the three companies the occupiers, instead of the Junction Company, is set out *infra*, p. 230, where the facts are more fully stated.

(l) In other words, the appellants contended for a strict adherence to the parochial principle.

contended that there must be taken into consideration (1) the enhanced price which the line would command by reason of its position as a connecting link ; (2) the probability that one of the three companies would give a higher rent than would be earned on the line ; (3) the actual rent paid under the lease, which should be taken as the rent a hypothetical tenant would give, except so far as the facts might show that during the year in question a tenant would not have given so much as the rent reserved by the lease. The arbitrator (to whom the appeal was referred) was not satisfied that if an independent company, or one of the three companies, occupied the line, they would derive any benefit from the occupation of the line except the receipts for the traffic passing over it (*m*), and therefore saw no reason to suppose that, if the railway was in the market, competition would induce those desiring to acquire it to give a higher rent than the net receipts they might expect to derive from the occupation. But he also stated in paragraph 22 of the case that, if the line were occupied by an independent company, charging tolls, he believed they would earn receipts which would justify the rateable value appealed against : but that this inference was to a considerable extent a matter of speculation. The Queen's Bench held that the appellants' contention was correct : but the Court of Appeal reversed this decision, and held that the statement in paragraph 22 was sufficient to maintain the rate (*n*). The House of Lords, however, without affirming or reversing the decision of the Court of Appeal, held that the case (as stated) raised no question of law, and remitted the case to the arbitrator to find affirmatively as a fact the value of the railway (*o*).

Although the authority of the decision of the Court of Appeal is somewhat impaired by the decision of the House of Lords, it may be useful to state the following passages (which appear not to be overruled) from the judgment of Lord ESHER, M.R. (*p*).

"In many cases questions of this kind have been raised, and what the courts have done over and over again is to say that the particular mode of estimating the rateable value, adopted in the particular case before them, was not under the circumstances contrary to the rule of law laid down by the statute ; but I do not think they meant to say that such mode of applying the rule so laid down was necessarily, and in all such cases, the only correct mode. . . . Where the case is that of one railway, that is where a line is used throughout as one railway by one company, and owned by such company from terminus to terminus, or, if a portion of the line is leased, only

(*m*) It must be noticed that this finding negatives the existence of any "contributive value" as a finding of fact.

(*n*) See 18 Q. B. D. 740.

(*o*) See 13 App. Cas. 592. Compare the decision of the assessment sessions in *Midland Rail. Co. v. St. Mary, Islington*, Ryde's Rat. App. (1886—1890), 139.

(*p*) See 18 Q. B. D., at pp. 754, 755.

such company, and nobody else, is entitled to lease it, in such a case the courts have said that it is not an incorrect mode of getting at the rateable value of part of the line in a parish, to take the gross receipts of the line in the parish by allocating to it a proportion of the receipts in respect of traffic passing through the parish in accordance with the mileage run in the parish, and to deduct therefrom the expenses necessary to produce those receipts and the proper statutory allowances. The courts have said that such a mode of proceeding in such a case is not wrong, but I do not think they have ventured to say that it is necessarily and in all cases the only correct mode. They have frequently said that it is a very rough mode of estimating the value, but that, if no better way can be found, it is not a wrong mode."

With reference to this paragraph, it may be noticed that in *R. v. London, Brighton and South Coast Rail. Co. (q)*, COLERIDGE, J., after laying down the parochial principle, puts the question, "What is to be done in the case of a parish on some branch line in which the company may work to a loss?" and answers it by saying, "That case must be decided, when it arises between the company and that parish, on the same principle precisely as the present, without reference to Croydon." It is to be noticed that in the *Croydon Case*, COLERIDGE, J., was dealing with a line owned by the Brighton Company, but used both by that company and the South Eastern Company; so that it is doubtful whether the judgment can be reconciled with the passage cited above from Lord ESHER's judgment.

One point in the judgments of the House of Lords in *North and South Western Junction Rail. Co. v. Brentford Union (r)*, remains to be noticed. It appears to have been suggested in argument that the owner of a "link line" might be able to exact from the occupiers of the lines which it linked together an exceptionally high rent; and it is apparently with reference to this argument that Lord HALSBURY said, "One topic, which I will describe as the blackmailing contract, I think ought to be dismissed from any consideration" [of rateable value]. It is obvious that if there is one line, and only one, between two large towns, a hundred miles apart, and one mile in the middle belongs to an independent company, they might extort an exorbitant rent from the owners of the other ninety-nine miles. But that exorbitant rent can hardly be the measure of the rateable value, since a similar rent might be extorted for any other *single* mile in the like circumstances, but could not be got for each and every mile at the same time, because no tenant could afford to pay such a rent. It is submitted that the hypothetical tenant's rent for part of a line cannot rightly be calculated on a principle which it would be impossible to apply to all the other parts.

(q) (1851), 15 Q. B. 313, at p. 361, *supra*, p. 205.

(r) (1888), 13 App. Cas. 592, at p. 594.

Running powers: leased lines—question of occupation.—

Where one company has constructed (and is the owner of) a line and stations, and grants the right to use the lines and stations to another company (or group of companies), either by giving running powers or by leasing the line and stations, two questions may have to be determined, viz. : (1) which company is the occupier ; and (2) how is the rateable value to be measured ? The first question, of course, determines the question which company is liable to pay the rate ; but we shall see that the answer to the first question may also affect the amount of the rateable value (*s*), so that it may be important to determine the first question even though, by special agreement between the companies concerned, the liability for the rates may be undertaken (as between the several companies) by one company only.

The question of occupation is determined upon the same principles which apply in the case of a dwelling-house, when the owner has let parts of the house to a tenant or tenants (*t*), and it has to be determined whether the landlord is, or is not, in occupation of the whole house, and the tenants are in the position of mere lodgers or not. The general rule is, that where the railway company which owns the line and stations, retains the general possession or management of the whole, and (subject to such possession or management) grants to another company the right to use the line and stations (even for so long a period as nine hundred and ninety-nine years), the owning company is the rateable occupier (*u*) ; but where the owning company gives up the possession and management of the line, and grants the use of the line and stations to another company, the latter company becomes the rateable occupier (*x*).

Running powers or easements distinguished from occupation.

—The cases which distinguish between occupation and the possession of an easement (or running powers) may also be referred to (apart from the rating of railways) in considering generally the

(*s*) Compare *R. v. Fletton* (1861), 30 L. J. M. C. 89, *infra*, p. 241, with *South Eastern Rail. Co. v. Dorking* (1854), 3 E. & B. 421, *supra*, p. 216 ; and see the remarks on *R. v. Fletton*, *infra*, p. 243.

(*t*) *Vide*, *supra*, p. 26.

(*u*) See *Leeds, Bradford and Halifax Rail. Co. v. Armley* (1861), 25 J. P. 711, *infra*, p. 229 ; *R. v. Lord Sherard* (1863), 33 L. J. M. C. 5, *infra*, p. 229 ; *Midland Rail. Co. v. Badgworth* (1861), 34 L. J. M. C. 25, *infra*, p. 231.

(*x*) See *North and South Western Junction Rail. Co. v. Brentford Union* (1887), 18 Q. B. D. 740, *infra*, p. 230 ; and note that the decision as to this point is untouched by the decision of the Court of Appeal (18 Q. B. D. 754), or of the House of Lords (13 App. Cas. 592). A similar decision on very similar facts was given by the assessment sessions in *Midland Rail. Co. v. St Mary, Islington*, Ryde's Rat. App. (1886—1890), 139 ; and by the London Quarter Sessions in *London and India Docks v. Stepney and Poplar Unions*, Ryde's Rat. App. (1891—1893), 153. See also *R. v. Lord Sherard* (1863), 33 L. J. M. C. 5, *infra*, p. 229 (as to the portion of the station exclusively occupied by the London and North Western Rail. Co.).

wider question—what is meant by rateable occupation? It may therefore be convenient to state somewhat more fully the facts of the cases above cited.

In *Leeds, Bradford and Halifax Rail. Co. v. Armley (y)*, the appellants, who were owners of the line in question, had granted to the Great Northern Railway Company, for a term of nine hundred and ninety-nine years, power to run trains over the whole of the appellants' railway, the appellants keeping it in repair and providing gate-keepers. By a later agreement the appellants gave the Lancashire and Yorkshire Railway Company for a term of twenty-one years power to work traffic over part of the line, but retained the coal traffic in their own hands. It was held that the appellants were rateable as the occupiers.

Although the fact that the power and duty of keeping the hereditament in repair is reserved to the owner is not conclusive evidence that the owner is in occupation, it is believed that there is no reported case in which it has been held that a grantee of running powers, to whom have been given the power and duty to repair, is *not* in occupation. So, too, the owner of a house, let to a tenant, may undertake to keep it in repair, though the tenant be the occupier; but if the owner grants a right to use the house to a person who undertakes to repair, it is difficult to contend that the grantee is not in occupation (*z*). The rule appears to be that the incidence of the duty of repairing may be very strong (if not conclusive) evidence of occupation *against* a person in a position analogous to that of a tenant, but cannot be conclusive evidence in his favour so as to make him not rateable.

In *R. v. Lord Sherard (a)*, which was a case arising out of the decision in *R. v. Fletton (b)*, the Eastern Counties Railway Company were the sole owners of the Peterborough Station, and by an agreement with the North Western Railway Company granted to the latter company for a term of nine hundred and ninety-nine years the right to use part of the station exclusively, and to use part of the station jointly with the Eastern Counties Company, in consideration of certain annual payments. The North Western Company undertook to repair that part of the station which they exclusively occupied, and the Eastern Counties Company undertook to repair the part jointly used, and to "manage and conduct the affairs and business of the joint station"; to provide the same amount of accommoda-

(y) (1861), 25 J. P. 711.

(z) (*J. Sutton Harbour Co. v. Plymouth Guardians* (1890), 63 L. T. 772; 55 J. P. 232, *infra*, p. 230; *Bradley v. Baylis* (1881), 8 Q. B. D. 195, *supra*, p. 27; *Charterhouse School v. Gayler*, [1896] 1 Q. B. 437, *supra*, p. 25. But see, however, *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, *supra*, p. 34, in which case the space appropriated to the grantee was part only of a larger hereditament, and not a hereditament complete in itself.

(a) (1863), 33 L. J. M. C. 5.

(b) (1861), 30 L. J. M. C. 89, *infra*, p. 241.

tion in all respects for the North Western Company as for themselves, and act with impartiality in the management of the station ; and the expenses of the management and conduct of the joint station were to be divided equally between the two companies. As to the part of the station exclusively occupied by the North Western Company, the latter company were admittedly rateable ; but the Eastern Counties Company contended that the two companies were in joint occupation of the remainder. The court held that the effect of the deed was to give the right to the use of the joint station to the North Western Company, without taking the occupation out of the Eastern Counties Company.

In *Sutton Harbour Co. v. Plymouth Guardians* (c), it was agreed that the harbour company should construct a tramway upon their own land, to the satisfaction of the South Western Railway Company's engineer, and that thereupon the railway company should, until the companies should otherwise agree (d), "exclusively and efficiently work, manage, and maintain the same, due regard being had to the berthing and loading and unloading of ships alongside of quay, and by and to the other lawful powers and duties of the harbour master" of the harbour company ; and that the railway company should pay the harbour company 1,000*l.* a year. The harbour company retained the right to land goods and do other acts incidental thereto upon the site of the tramway. The Queen's Bench decided that, as long as the agreement subsisted, the railway company were in occupation of the tramways, the control of the harbour master being as to the loading and unloading of ships, and not as to the general management of the tramways. It seems clear that, had the working of the tramways been subject to the general control of the harbour company, the decision would have been the other way (e).

In *North and South Western Junction Rail. Co. v. Brentford Union* (f), the junction company, who constructed the line, granted a lease of their line in perpetuity to the North Western, the Midland, and the North London Companies. Under the lease the rent was recoverable by action or by distress ; the lessees were to have the exclusive right of conducting, managing, regulating, and carrying on the traffic, and of fixing the tolls, rates, fares, and charges ; and the lessors, on the application of the lessees, were

(c) (1890), 63 L. T. 772 ; 55 J. P. 232.

(d) A tenant at will may be rateable : see *R. v. Chelsea Waterworks* (1833), 5 B. & Ad. 156, at p. 169, *supra*, p. 19.

(e) See *Holywell Union v. Halkyn District Mines Drainage Co.*, [1895] A. C. 117, *supra*, p. 47.

(f) (1887), 18 Q. B. D. 740. The decision of the Queen's Bench Division on the question of occupation was left untouched by the decision of the Court of Appeal, and of the House of Lords : see 13 App. Cas. 592.

to make and publish all proper byelaws and notices of tolls. It was held that the junction company were not in occupation of the line (*g*).

The first Badgworth Case: the question of occupation.—In *Midland Rail. Co. v. Badgworth* (*h*), the railway in question was part of the line between Gloucester and Cheltenham, which was constructed for the common purposes of the Great Western and Midland Companies: and on completion the half of the railway nearest Gloucester became by the special Acts the property of the Midland Company, and the other half was the property of the Great Western Company. Each company was bound to keep its own half in repair, and paid the officers employed upon it. The line was of a mixed gauge, having three rails, of which one was used only for the broad, another only for the narrow gauge traffic, and the third for both broad and narrow gauge. The Great Western Company used only the broad gauge, the Midland Company used only the narrow gauge. The traffic of the Midland Company over the whole of the line far exceeded that of the Great Western Company; and under the special Acts neither company could claim tolls for the use of its line from the other company. The line in the parish of Badgworth was part of the half which belonged to the Great Western Company, and both the Great Western and the Midland Companies were rated as occupiers of that part of the line; but the Queen's Bench held that the Midland Company had merely an easement over, and not an occupation of, the part of the line belonging to the Great Western Company; and that in substance, though not in form, the effect of the special Acts was that each company granted running powers over its own line to the other company.

One point is perhaps deserving of more consideration than was given to it in the judgments of the court. It has since been decided (*i*) that a tramway company are rateable for tramways laid in the highway, although the public have an unrestricted right of passing over the surface of the rails. Now in the *Badgworth Case* the Midland Company were the only persons who used one of the rails on the Great Western Company's property, although,

(*g*) Compare the decision of the assessment sessions on very similar facts, in *Midland Rail. Co. v. St. Mary, Islington*, Ryde's Rat. App. (1886—1890), 139, with reference to the Tottenham and Hampstead Junction Railway; and *London and India Docks v. Stepney and Poplar Unions*, Ryde's Rat. App. (1891—1893), 153.

(*h*) (1864), 34 L. J. M. C. 25; *S. C. sub nom. R. v. Midland Rail. Co.*, 29 J. P. 211. This case is sometimes called "the first *Badgworth Case*," to distinguish it from *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251, *infra*, p. 236.

(*i*) *Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9; *infra* p. 371.

of course, they could only use it by accommodating their traffic to the broad gauge traffic of the Great Western Company. And a very similar statement might be made of a tramway company who can only use their rails by accommodating their traffic to the public traffic. It may be objected that the single rail above referred to, though used only by the Midland Company, was kept in repair by and belonged to the Great Western Company: whereas the rails of a tramway company are repaired by and belong to the company who use them. But rateability depends on occupation, not on ownership.

There is, however, one point on which the position of the Midland Company may be distinguishable from that of a tramway company. A tramway company are the only persons who use *and have a legal right to use*, the rails as a tramway: whereas, although the Midland Company were the only persons who did use the single rail above referred to, the Great Western Company appear to have had, under the special Acts, a legal right to use it, if they adopted narrow gauge rolling stock (*k*).

The effect of the decision in the first *Badgworth Case* (*l*) upon the measure of value applicable to the Great Western Company's line will be considered when we deal with the second *Badgworth Case* (*m*).

Agreements as to running powers.—It has been seen (*n*) that where one company which is in occupation of the railway, grants running powers over that railway to another company, the latter company (having merely an easement or wayleave) is not rateable. It now has to be considered on what principle the former company is to be rated.

Two classes of cases have arisen—(1) where each of two companies have granted running powers over their line to the other company free of any toll, or money payment (*o*); and (2) where one company has granted to another company running powers, in consideration of a toll (*p*), or a fixed money payment (*q*). In neither class of cases can it be said that the decisions are easily

(*k*) See the judgment of CROMPTON, J., 34 L. J. M. C., at the end of p. 29.

(*l*) *Midland Rail. Co. v. Badgworth* (1864), 34 L. J. M. C. 25; *S. C. sub nom. R. v. Midland Rail. Co.*, 29 J. P. 211.

(*m*) *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251; 31 J. P. 261; 36 L. J. M. C. 33; 15 W. R. 579, *infra*, p. 235.

(*n*) *Supra*, p. 228.

(*o*) See *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, and *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251, *infra*, p. 236.

(*p*) *R. v. St. Pancras* (1863), 32 L. J. M. C. 146, *infra*, p. 252.

(*q*) *R. v. Fletton* (1861), 30 L. J. M. C. 89, *infra*, p. 241; *Altrincham Union v. Cheshire Lines Committee* (1885), 15 Q. B. D. 597, *infra*, p. 238. In *Sealecoates Union v. Hull Docks*, [1895] A. C. 136, *infra*, p. 239, the railway company had running powers over the dock company's rails free of toll, but presumably some valuable consideration had been given: *vide infra*, p. 245.

*reconciled. A summary of the decisions is given below (*r*), but it may be useful first to examine them in detail.

The Brighton Company's Case: mutual running powers toll-free.—In *R. v. London, Brighton and South Coast Rail. Co. (s)* each of two companies (the South Eastern and the Brighton) had the right to run, free of toll, over a given portion of the other company's line, the portions being in different parishes. In rating the Brighton Company, the question was raised whether there should be brought into account such a toll as the South Eastern Company would have been willing to pay for the use of the Brighton line, if that use had not been allowed for by giving the Brighton Company a similar use of the South Eastern line: and if so whether the Brighton Company were not entitled to deduct from the imaginary toll, which they would have received, the amount of the toll which they would have had to pay for the use of the South Eastern line, as being part of the working expenses necessary to earn the toll on their own line (*t*). The sessions (in effect) found that the Brighton Company received a rent in kind, and took into account the rent which the South Eastern Company would have given for the right of running over the Brighton line; but in estimating the working expenses to be deducted from the gross earnings within the parish, they allowed (besides the general costs of maintaining the way in a working condition, and watching it) such further sum as they found to be reasonably incurred by the Brighton Company in collecting the supposed rent. The decision of the sessions was approved, subject to a qualification which is very obscure (*u*), as appears from the following extract from the judgment of COLERIDGE, J. (*v*):

"We think that the sessions rightly decided this [*i.e.*, the arrangement for running toll-free over each other's line] to be rent in kind, earned by this land. It seems to us exactly the same in substance as if so many tickets were daily issued, without money paid for them, to the South Eastern Railway Company, in return for so many received from them. The tickets mutually transferred would, on either side, represent so much money earned.

(*r*) *Infra*, p. 244.

(*s*) (1851), 15 Q. B. 313.

(*t*) The argument on behalf of the rating authorities used this illustration: "If two persons, occupying contiguous fields of equal size and fertility, agreed each to let the cattle of the other pasture throughout both, neither could claim an abatement of the rate by reason of a diminished value of the occupation: land subjected to that contract would let as high as if free from it" (see 15 Q. B., at p. 336). It is submitted that there is no answer to this argument.

(*u*) It is remarkable that the head-notes to the reports in 15 Q. B., at p. 313, and 20 L. J. M. C., at p. 124 (which state the reporters' views of the effect of the written judgment) are diametrically opposed to one another. The head-note to the report in 6 Rail. Cas., at p. 440, follows the Law Journal report. The judgment itself is in the same words in all the reports: see, further, note (*y*), *infra*, p. 234.

(*v*) 15 Q. B., at p. 366; 20 L. J. M. C., at p. 146.

But then we think these earnings must be subject to exactly the same deductions as if they were received in money. The rate therefore will, in this respect, be amended according to the principle now laid down."

Now the general principle here laid down is perfectly correct, but the application of that principal is rendered obscure, and perhaps entirely wrong, by a complete misapprehension of the facts. The general principle appears to be that where one company grants running powers over its own line, free of toll, to another company, in consideration of a grant of similar running powers over the line of the other company, free of toll, it must be assumed (when dealing with the rating of the two lines) that each company gives, and receives, a money payment. Consequently, in rating the Brighton Company's line it must be assumed that the Brighton Company receive a money payment in the nature of toll from the South Eastern Company. The misapprehension as to the facts consists in supposing that this payment in the nature of toll, is of the same character as the payments made by the public to the Brighton Company for tickets. Suppose that the imaginary toll is 1,000*l.*, and that the Brighton Company receive another 1,000*l.* from the sale of tickets in the same period. The former sum would be free from, while the latter would be subject to, the working expenses of providing locomotives, carriages and waggons, and paying the drivers, guards, etc. In calculating the amount of the toll which a company will pay, the fact that the company will have to bear the expenses here referred to, is of course taken into account, and the amount of the toll is presumably, in proportion, less than the gross receipts. But if, in the extract above quoted, COLERIDGE, J., meant to say that earnings in the nature of toll must be subject to exactly the same deductions as if they were received in money from passengers travelling in the Brighton Company's trains, then it is plain that he completely misunderstood what the nature of a toll is (*y*). If the sessions had brought into account the whole of the earnings of the South Eastern trains, and not the imaginary toll paid out of those earnings, the judgment could be supported; but not otherwise.

The suggestion that (on the assumption that each company paid a toll to the other) the payment of a toll for using one piece of line, should be regarded as an expense necessary to earn the toll on another piece of line, appears to be clearly wrong. Suppose

(*y*) The head-note to the report in 20 L. J. M. C., at p. 124, represents the judgment to mean that "the Brighton Company were entitled to deduct [from the imaginary toll payable to them] the value of the tolls payable by them in respect of the passage of their traffic over an equal portion of the line of the South Eastern Company." Now, assuming that the toll payable by each company was the same, the judgment (thus interpreted) in effect gets rid of the toll altogether, by putting down the same sum on both sides of the account. Or, assuming that the toll payable, and the toll receivable, by either company are not equal in amount, the result is that in one parish the value of toll receivable must be a minus quantity. It is difficult to believe that the court appreciated and intended this result.

that each of the two companies paid the same amount of toll, but that there was a separate agreement as to each toll: and suppose that the agreement under which the South Eastern Company paid a toll came to an end, and that company ceased to use the Brighton line. The Brighton Company would still have to pay a toll for their use of the South Eastern line: and this shows that the payment of that toll cannot be regarded as an expense necessary to earn the toll received from the South Eastern Company, but was an expense necessary to the earning of the Brighton Company's receipts earned by their trains running over the South Eastern Company's lines.

The two Badgworth Cases: questions of value.—In the first *Badgworth Case* (*z*), where the Midland and the Great Western Companies each owned half of the line between Gloucester and Cheltenham, and each company had running powers over the half belonging to the other company, it was held that the Great Western Company alone were rateable in respect of the half belonging to them, and that the Midland Company had no occupation of, but merely an easement over, that half. In the case stated by the sessions, it was stated that the traffic of the Midland Company far exceeded and was more profitable than the traffic of the Great Western Company over the railway. It was contended in argument that the effect of holding the Midland Company not to be occupiers of the part of the line belonging to the Great Western Company, would be to deprive the parishes in which that line lay of the value of the Midland Company's traffic, because the Great Western Company could never be rateable in respect of the profits derived from the line by the Midland Company. But COCKBURN, C.J., said (*a*):

"I do not at all agree to that proposition. I think, if it is established that the Great Western Company are the occupiers, and the sole occupiers, it follows as of course that they are rateable in respect of that occupation. Then the question presents itself, in respect of what value are they rateable? In respect of the value of the line. If they do not get the whole of the profits of the line, if they do not derive the whole amount of the profits, that is their own concern. Why is it that they do not? Because they have agreed, instead of taking a certain proportion of the profits which may be made on this part of the railway, to take a certain proportion of the profits made on that part of the railway belonging to the Midland Company. Counsel for the respondents says that is an unprofitable bargain. What has the parish to do with that?"

And MELLOR, J., said (*b*):

"It is clear what the foundation of the rate must be; it must be the value of the occupation of the line to the Great Western Company, plus the use

(*z*) *Midland Rail. Co. v. Badgworth* (1864), 34 L. J. M. C. 25, *supra*, p. 231.

(*a*) 34 L. J. M. C., at p. 28.

(*b*) 34 L. J. M. C., at p. 30.

which the Midland Company make of it, paying for it to the Great Western Company, in point of fact, by allowing them running powers over their portion of the line."

The second *Badgworth Case* (*c*), arose out of this decision. The Great Western Company's traffic was much smaller and less profitable than that of the Midland Company : and in rating the Great Western Company as the sole occupiers of their half of the line, the parochial authorities (relying on the decision in the first *Badgworth Case* (*d*)) had arrived at the rateable value by adding to 256*l.*, taken as the rateable value arising from the Great Western Company's own profits, the sum of 792*l.* as the rateable value of the line in respect of the sum which the Midland Company would have had to pay if they had not the right of running toll-free over the Great Western Company's line. But the Queen's Bench held that the rateable value was represented by the value of the Great Western Company's own traffic, plus the right of running toll-free over the Midland Company's line. In the course of the argument, COCKBURN, C.J., expressed his opinion (subsequently confirmed by the judgment) as follows (*e*) :

" I think that there is considerable difficulty in saying that the appellants are liable to be rated on the amount of the tolls the Midland Company would have to pay them, when in fact they receive no tolls. . . . In the former case (*f*), it was not brought to our attention that there was any great disproportion in the earnings of the two companies" (*g*).

In giving judgment, COCKBURN, C.J., said (*h*) :

" I think the Great Western Company are rateable in respect of this property according to the profit they make of it, plus the increased value by reason of their having the right of running, not only over this portion and the rest of their own line, but also over the Midland line. I think it would not be a sound principle to lay down, that the appellants are liable in respect of the profit which the Midland make on this portion of the line, unless that profit were no more than equivalent to what the appellants got in exchange for this right of the Midland Company to run over the appellants' portion, viz., the value of the corresponding easement which the appellants have over the Midland line. . . . The sessions must ascertain what is the value to the appellants, or what would be the value to any one who came in their place as a yearly tenant, of this property enhanced by the easement of running over the other half of the line."

(*c*) *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251.

(*d*) *Midland Rail. Co. v. Badgworth* (1864), 34 L. J. M. C. 25.

(*e*) L. R. 2 Q. B., at pp. 256, 257.

(*f*) *Midland Rail. Co. v. Badgworth*, *supra*.

(*g*) The inequality was stated in the case, relied on in argument, and noticed in the judgment : *vide supra*, p. 231.

(*h*) L. R. 2 Q. B., at p. 257.

And MELLOR, J., said (*i*) :

“We must consider that the appellants’ occupation in this parish is rendered so much less valuable by reason that they are not allowed to charge a toll against the Midland Company, but only allowed as an equivalent to run their trains over the other portion of the line.”

Discussion of the two Badgworth Cases as to questions of value.—It must be admitted that very curious results follow from the decision in the second *Badgworth Case* (*k*). If (as was held in that case) the special terms of the agreement between the Great Western and Midland Companies be held to affect the rateable value of the whole line (of which each company owns part), the result is that part of the value of the line is transferred from one parish (or group of parishes) to another. For so much of the rateable value of the whole line as may be attributed to its capacity for carrying the Midland Company’s traffic is by the judgment (in effect) assigned to the half of the line belonging to that company : and so much of the value as is attributable to the Great Western Company’s traffic is assigned to the other half. So that, if the traffic of one company is larger and more profitable than that of the other, the rateable value of one-half of the line is greater than that of the other, although the volume of the joint traffic may be uniform, and equally profitable, from one end of the line to the other. Again, on the principle of the second *Badgworth Case*, it would apparently make very little difference to the rateable value of the Great Western Company’s half of the line whether the bulk of their profits were earned on their own half, or on the Midland Company’s half of the line : for (assuming the total of their profits to remain unaltered) as the proportion of profits earned on their own half diminished, the value of the easement over the Midland Company’s half would increase. Consequently, assuming that nearly the whole of the traffic of both companies were carried on the Midland Company’s half, the trains of both companies running nearly empty over the Great Western Company’s half, the latter half of the line would still carry a substantial proportion of the rateable value of the whole, though it possessed an infinitesimally small proportion of the earning power of the whole line. Again, if all other circumstances remained unaltered, an increase in the profits of the Great Western traffic over the Midland Company’s half in one parish would mean an increase in the rateable value of the Great Western Company’s line in another parish : and if such increase in profits involved an increase in the number of vehicles running over the Midland

(*i*) L. R. 2 Q. B., at p. 259.

(*k*) *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251.

Company's line, that increase would involve a diminution in the rateable value of that line, because the cost of maintenance would be increased without increasing the profits received by the Midland Company.

The Altrincham Case.—In *Altrincham Union v. Cheshire Lines Committee* (l), under an agreement embodied in a special Act, the London and North Western Company had power to work over and use part of the line vested in the Cheshire Lines Committee, with the stations, sidings, watering-places, etc., on payment of certain tolls, with the option (which was in fact exercised) of commuting the tolls for a fixed annual payment of 2,500*l.* This sum proved to be less than the actual value to the North Western Company, and the rateable value calculated in the usual way from the earnings of the North Western Company's traffic would have been much greater than the rateable value calculated with reference to the sum of 2,500*l.* paid by the company for their running powers. The Cheshire Lines Committee remained in occupation of the whole of their line, and ran traffic of their own over the greater part of it, but only traffic belonging to the North Western Company ran over a small part. The Cheshire Lines Committee being rated for the whole upon the value of the traffic actually passing over their line, contended that the rateable value was the rent which a hypothetical tenant would give subject to the same restrictions as those under which the committee held, and not the rent which a tenant entirely unfettered might give: and that the rateable value must be based upon the profits which could be in fact earned in accordance with the terms of the Act under the powers of which the railway was constructed, and not upon the profits which might be earned were that Act not in existence. The contention was upheld by the Queen's Bench Division and the Court of Appeal (m). It appears to have been admitted in argument (on behalf of the assessment committee) that if the Act embodying the agreement had been a public one, the line could not be valued at more than 2,500*l.* a year; but it was contended that the Act, being only a private Act (n), had only the effect of an agreement settling the rights of the parties *inter se*. But the Court of Appeal held that though the difference between a public and a private Act affects the construction when there is any doubt as to the meaning, yet (when the meaning is ascertained)

(l) (1885), 15 Q. B. D. 597.

(m) The decision appears to be supported by the decision of the House of Lords in *Sealecoates Union v. Kingston-upon-Hull Docks*, [1895] A. C. 136, *infra*, p. 239.

(n) This appears to have been assumed, but the Act was apparently a public Act of a local and personal character: see the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 9.

the effect is the same in either case ; and that the line was “struck with sterility” (*o*) by the Act.

And BOWEN, L.J., said (*p*) :

“We must construe the Act to the best of our ability, and see whether it really makes the occupation one which never can be beneficial in anyone’s hands except to the extent indicated by the sum reserved as rent.

In this case I think that the statute, which has created the right to make this railway, has in the same breath fixed its value for all time, and has enacted that, beyond that value the land shall be for ever sterile in the hands of anyone (*q*). Therefore a logical application of the principle, which relieves from rateability the barren rock, relieves from rateability *quo usque* land the value of which is permanently fixed by statute in whosoever hands it may be.”

The judgment just quoted appears (rightly or wrongly) to leave out of consideration altogether the question what rent the London and North Western Company would be willing to give for the line if they had not obtained running powers under the statutory agreement, on payment of 2,500*l.* a year. It is true that another Act of Parliament would be necessary to enable them to become yearly tenants, but it is not clear that this ought to make any difference. For under the existing statutes the Cheshire Lines Committee themselves could not be tenants of the line of which they were already owners. The definition of “net annual value” in the Parochial Assessments Act, 1836, renders it necessary to make the hypothesis that the hereditament is let to a yearly tenant, even though it is not and cannot be so let (*r*), and it may be said to be as reasonable to suppose the hereditament let to the company having valuable rights over the property as to the actual occupier. On the other hand, it may be contended that although the hereditament must be supposed to be let, the tenant must be assumed to be under all the conditions attaching to the actual occupier. It is not clear how these conditions could attach in the case of the London and North Western Company.

Running powers, toll-free, over dock company’s property.—

A question very similar to that raised in *Altrincham Union v. Cheshire Lines Committee* (*s*) arose in *Seulcoates Union v. Kingston-upon-Hull Docks* (*t*). On the dock company’s estate were railway and tramway lines, belonging to the company, but used by the

(*o*) As to the application of this phrase, *vide infra*, p. 246.

(*p*) 15 Q. B. D., at p. 603.

(*q*) This would not be true of the London and North Western Company if they were to become the occupiers.

(*r*) *Vide per* Lord HERSCHELL, L.C., in *London County Council v. Erith and West Ham*, [1893] A. C. 562, at pp. 595, 596; Ryde’s Rat. App. (1891—1893), at pp. 431—433; *supra*, p. 139.

(*s*) (1885), 15 Q. B. D. 597.

(*t*) [1895] A. C. 136.

North Eastern Railway Company for the traffic between their railway system and the docks. The North Eastern was the only railway having access to the docks. By the Dock Company's Acts, they were prohibited from taking any tolls for the use of the lines, but the railway had in fact paid to the dock company 5,000*l.* a year (*u*), for each of the five years ending December, 1890, when the payments ceased, though the user continued. It was found as a fact in the case that the North Eastern Company, or some other tenant, could be found who would pay a rent for the lines if such rent could be legally exacted by the dock company. The Court of Appeal (*dissentiente* Lord HALSBURY) held (*x*) that the dock company were liable to be rated for the lines at the rent which such a hypothetical tenant would give; the decision being based on the decision in *London County Council v. Erith and West Ham* (*y*), but the House of Lords reversed this decision, on the ground that the principle of the *Erith Case* did not apply. Lord HERSCHELL, L.C., said (*z*) :

"No doubt, if it could be established that they might earn more than they do, and only earn less because the company choose to forego a sum, which they have only to hold out their hands to receive, it might be fairly argued, as the respondents in this appeal have argued, that in considering what was the rateability of this property, what a tenant from year to year would give, you were to come to the conclusion that he would give something more than the actual earnings or profits (the surplus of earnings over receipts), inasmuch as he has only to come into occupation to make them greater at his own will. I should not for a moment dissent from that argument if it could be established in point of fact. The fact that the particular occupier chooses to forego a profit which he has only to hold out his hand to receive, of course, cannot exclude that source of profit from consideration when you are asking what a hypothetical tenant would give. But in the present case, the only company so far as appears that has a junction with these railways, is the North Eastern Railway Company, and by an Act passed by the legislature, no tolls can be demanded by this dock company for the passage of traffic over their lines. . . . It is said, 'But they [the dock company] could earn more profits than they are earning, and therefore you ought to suppose that a hypothetical tenant would give more.' But if the legislature have said they shall not earn the suggested further profits because they shall not charge tolls, how can it be established as a matter of fact that they could earn more? It appears to me that, if you are to disregard such statutory restrictions as these, you might just as well say that a railway company ought not to be rated only according to the tolls which it receives—ought not to be rated even according to the tolls which it could by law receive within its maximum, but that you ought to disregard its statutory maximum and ask what a tenant from year to year would give for the railway, if he could charge any tolls which he pleased."

(*u*) It did not appear why the railway company made this payment.

(*x*) [1894] 2 Q. B. 69.

(*y*) [1893] A. C. 562 : Ryde's Rat. App. (1891—1893), 382 ; *supra*, p. 139.

(*z*) [1895] A. C., at pp. 147—150.

"I do not think there is any foundation for such a proposition. It is supposed to be involved in the decision in the *Erith Case* (a). The *Erith Case* and all the cases there dealt with were of a totally different character, . . . I took care to guard myself, as I thought, in the opinion which I delivered against being supposed to deal with the class of cases now before your lordships, because I said (b), 'There is no doubt a certain class of cases in which the amount of profit which can be earned by the occupation of a hereditament is very material in ascertaining the sum at which it should be assessed. In the case of gasworks, waterworks, and other industrial undertakings, where a hereditament is enhanced in value by its connection with a profit-bearing undertaking, the profits earned and the shares of those profits attributable to any particular hereditament have to be taken into account, and in such cases as these (that is, wherever profits have to be taken into account) any restrictions which the law has imposed upon the profit-earning capacity of the undertaking must, of course, be considered.'

"The present case comes exactly within the class of cases which I had in view when I used those words. . . . The question is whether you are to consider the profits which it [the dock company] might earn if a state of things existed which does not exist, or whether you are to consider the profits which it can earn under the only conditions under which it is allowed to earn profit at all. It seems to me that the latter is the state of things which must be taken into account, and that any other course would lead not only to absurdities, but to the gravest injustice as regards the rating imposed."

Use of station at a fixed rent: the Fletton Case.—Questions as to the rating of a station subject to a right of user at a fixed rent (similar to those relating to the rating of lines subject to running powers) arose in *R. v. Fletton* (c). The Eastern Counties Railway Company, being sole owners of the Peterborough Station, in 1848 entered into an agreement by deed with the North Western Railway Company, by which the latter company were for nine hundred and ninety-nine years to have the joint use of part of the station, and the exclusive use of another part, on certain terms, including (*inter alia*) the payment of a fixed annual sum to the Eastern Counties Company. In consequence of a subsequent falling off in their traffic, the station became of less value to the North Western Company than the sum actually paid by them to the Eastern Counties Company under the agreement. The latter company being rated for the whole station, and having appealed, it was stated in the case that "for the purposes of this case they were to be deemed to be the persons rateable in respect of the whole occupation" (d). It was held that, on this assumption, the

(a) *London County Council v. Erith and West Ham*, [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 352, *supra*, p. 141.

(b) See [1893] A. C. at p. 592; Ryde's Rat. App. (1891—1893), at p. 428, *supra*, p. 172.

(c) (1861), 30 L. J. M. C. 89.

(d) This statement was apparently the result of an agreement entered into in order to limit the points at issue between the parties, it being assumed that questions of

Eastern Counties Company were assessable on the full amount which they received from the North Western Company, and not upon the present actual value of the station. In giving judgment, COCKBURN, C.J., said (*e*) :

" The fallacy in the argument in favour of the Eastern Counties Company consists in looking at the London and North Western Company as the occupiers, and in considering what a tenant from year to year coming in in their place would pay as rent for the use of the station. But the London and North Western Company are not occupiers of the station at all ; they have only an enjoyment by way of user—in other words, an easement. The occupiers are the Eastern Counties Company, subject to this easement of the other company, and the true question is, what would a tenant coming into the place of the Eastern Counties Company give for such occupation ? Now it is plain that a tenant, coming into their place, in considering what rent he would give after the necessary deductions, would take into account, as increasing the value of the premises, the amount to be annually paid by the London and North Western Company for their use of the station. It is true the Eastern Counties Company, if they were to let the station, though they could of course only let it subject to the right of the London and North Western Company to use it, might (taking a lower rent from their immediate lessee) reserve to themselves the receipt of the amount annually payable by the London and North Western Company. Whether, under such circumstances, they would or would not still remain liable as occupiers, *quoad* a moiety of the line, the London and North Western Company having only an easement therein, it is unnecessary to decide. It is sufficient, in our opinion, for the present purpose, to say that, *rebus sic stantibus*, they are assessable to the full amount of what they receive. The true principle according to which the value of the occupation to the hypothetical tenant contemplated by the Parochial Assessments Act is to be estimated, is to assume the continuance of those circumstances which constitute the value to the existing occupier, unless it be made to appear that these circumstances are about to undergo a change. But there is nothing in the present case to lead to the supposition that the Eastern Counties Company will either forego their right under a very advantageous agreement which is to bind the London and North Western Company to a very remote future, or that the Eastern Counties Company will either let the station to any other occupier, or if they do, will place such occupier, relatively to the other company, in a different position from that in which they themselves stand. It will be time enough to deal with such altered circumstances when they arise."

The first part of the passage above cited shows how important it is in dealing with a hereditament which is owned by one company while another company has an easement over it, to determine which of the two companies is the occupier. For it seems clear that had the North Western Company been held to be occupiers (or joint occupiers) of the station, the sum which they paid, being

amount were independent of the question who were the occupiers. In the judgment of the Queen's Bench, however, this was not so, and the question of occupation was subsequently raised in *R. v. Lord Sherard* (1863), 33 L. J. M. C. 5, *supra*, p. 229.

(*c*) 30 L. J. M. C., at p. 94.

in the nature of rent, would not have been conclusive of the rateable value of their occupation (*f*). It would have been open to them or to the rating authorities (as it is whenever property let on lease is to be rated) to show that the sum actually paid was higher, or lower, than the true value. Whereas, assuming the Eastern Counties Company to be the occupiers, the sum *received* by them was made (according to the judgment of the court) conclusive as the measure of the value of that part of the occupation which was represented by the easement of the North Western Company. This case therefore shows that payments received by (though not payments made by) the occupier of a hereditament by virtue of his occupation must be taken into account as measuring the rateable value.

One consideration may, however, throw some doubt on the correctness of the decision. Suppose that the North Western Company had agreed to pay for the right to use the Peterborough Station a lump sum, instead of an annual payment, to the Eastern Counties Company, who had spent that lump sum in paying off the holders of debentures, or in buying rolling stock, to be used only on a branch line fifty miles from Peterborough: it would be difficult, if not impossible, to contend that the payment of this lump sum should be brought into account in estimating the rateable value of the station thirteen years later: but (if the annual payment actually agreed to was the equivalent of such a lump sum) this was precisely the contention in effect adopted by the court. If the payment of a lump sum had been agreed upon in 1848, it would have been clear in 1861, when the case was argued, that the payment was made to the Eastern Counties Company, not because they were occupiers in 1861, but because they had been owners in 1848. If it be said that an annual payment would be receivable by the occupier of the hereditament for the time being, and therefore would enhance the rateable value, while the payment of an equivalent lump sum would not, it follows that the rateable value of a hereditament may be affected by the form, as well as by the substance, of an agreement made many years before with the then owner of the hereditament.

It must, however, be noticed that the principle of *R. v. Fletton* (*g*) appears to be supported by the decision of the Court of Appeal in *Altrincham Union v. Cheshire Lines Committee* (*h*), and perhaps also by the decision of the House of Lords in *Scutcoates Union v. Hull Docks* (*i*).

(*f*) *Vide supra*, p. 155.

(*g*) (1861), 30 L. J. M. C. 89; 3 E. & E. 450.

(*h*) (1885), 15 Q. B. D. 597; 50 J. P. 85, *supra*, p. 238.

(*i*) [1895] A. C. 136; *sed vide infra*, pp. 245, 246.

Summary of decisions as to rating of lines subject to running powers.—In *R. v. London, Brighton and South Coast Rail. Co. (k)*, the Brighton and South Eastern Companies had running powers over each other's line free of toll, and the court held that, in rating the Brighton Company, to that company's earnings must be added the tolls which would have been paid by the South Eastern Company but for the special arrangement between the two companies : and that this imaginary toll, plus the net receipts of the Brighton Company, made up the value of their line to that company. This decision is supported by the first *Badgworth Case (l)*, where the court considered (but did not perhaps expressly decide) that in rating the Great Western Company for their line, over which the Midland Company had running powers, toll-free, the value of the Midland Company's traffic over that line must be taken into account.

But this conclusion was expressly negatived by the second *Badgworth Case (m)*, in which it was held that the rateable value of the Great Western Company's line was represented by the value of their own traffic, plus the right to run toll-free over the Midland Company's line ; and that the actual earnings of the Midland Company's traffic over the Great Western Company's line must not be taken into account in rating the latter company. The value of the Midland Company's traffic being greater than that of the Great Western Company's traffic, it followed that, by giving running powers over each other's line, the two companies had not made a perfectly equal exchange, and the Great Western Company received in exchange for the Midland Company's running powers a right which was of less value than those running powers. So that the effect of the decision was, that in rating the Great Western Company the value of the Midland Company's traffic to the *Great Western Company*, and not its full value to the Midland Company, was brought into account. This principle was followed in *Altrincham Union v. Cheshire Lines Committee (n)*, in which the North Western Company had running powers over the railway of the Cheshire Lines Committee on payment of a fixed annual sum, which was less than the full value of the traffic to the North Western Company. It was held that the Cheshire Lines Committee could be rated in respect of the North Western Company's traffic only at the sum actually paid to them in respect of that traffic ; in other words, the value of the traffic to the Cheshire

(k) (1851), 15 Q. B. 313 (*vide supra*, p. 234), where the question of the proper deductions from the toll for expenses is considered.

(l) *Midland Rail. Co. v. Badgworth* (1864), 34 L. J. M. C. 25 ; 11 L. T. 303 ; 13 W. R. 202 ; 29 J. P. 211, *supra*, p. 235.

(m) *Great Western Rail. Co. v. Badgworth* (1857), L. R. 2 Q. B. 251 ; 31 J. P. 231 ; 36 L. J. M. C. 33, *supra*, p. 236.

(n) (1885), 15 Q. B. D. 597, *supra*, p. 238.

Lines Committee, and not its value to the North Western Company, was brought into the account.

A decision in accordance with this decision was given in the converse case, in *R. v. Fletton* (o) ; for there the North Western Company paid, for the joint use of a station occupied by the Eastern Counties Company, an annual sum *greater* than the true value of the station to the North Western Company ; and it was held, that in rating the Eastern Counties Company the sum which they received for the joint use of the station (*i.e.*, its value to them, and not its true value) must be brought into account (p).

A similar principle appears to be the foundation of the decision as to the rating of the railways in *Sculcoates Union v. Hull Docks* (q). In that case the North Eastern Railway Company had the right of running toll-free over lines belonging to the dock company, and it was held that in rating the dock company the toll which the North Eastern Company (or any other company) would in other circumstances have given for the right to run over the lines ought not to be brought into account ; in other words, the decision may appear to be that the value of the lines to the dock company, and not their value to the North Eastern Railway Company, must determine their value.

It must be noticed that this decision appears to overrule *R. v. London, Brighton and South Coast Rail. Co.* (r), where it was held that a hypothetical toll, payable for running powers, must be assumed to be received by the company owning the line, though no toll in fact be paid : and it is not clear that the decision in *Sculcoates Union v. Hull Docks* (s) is not really at variance with *R. v. Fletton* (t) and *Altrincham Union v. Cheshire Lines Committee* (u). In *Sculcoates Union v. Hull Docks*, the facts appear to be stated incompletely. It is said that the dock company were prohibited by their Acts from charging any tolls for the use of their lines, and this no doubt was a limitation of the earnings of the dock company. It does not appear whether this limitation was accepted by, or imposed upon, the dock company without any valuable consideration being received by that company. If the right to run over the dock company's lines had been granted in consideration of an annual payment to the dock company, then, according to *R. v. Fletton* (x), and *Altrincham Union v. Cheshire Lines Committee* (y), that annual payment ought to be taken into

(o) (1861), 30 L. J. M. C. 89 : 3 E. & E. 450.

(p) See the remarks, *supra*, p. 243, as to the difficulty of following out this principle.

(q) [1895] A. C. 136, *supra*, pp. 239—241.

(r) (1851), 15 Q. B. 313, *supra*, p. 233.

(s) [1895] A. C. 136.

(t) (1861), 30 L. J. M. C. 89, *supra*, p. 241.

(u) (1885), 15 Q. B. D. 597, *supra*, p. 238.

(x) (1861), 30 L. J. M. C. 89.

(y) (1885), 15 Q. B. D. 597.

account in rating the dock company, whether the annual payment were more (z) or less (a) than the value of the right to run over those lines. And if such an annual payment ought to be taken into account, why should not the payment of a capital sum, once for all, be taken into account? It had already been held in the second *Badgworth Case* (b), that a right to run over the Midland Company's line must be taken into account in rating the Great Western Company: and on principle it seems difficult to draw any distinction between a single payment of a capital sum, a continuing payment of an annual sum, or a continuing exercise of valuable rights. If one ought to be taken into account all ought to be. But in *Sculcoates Union v. Hull Docks* (c), the House of Lords appear to have assumed that no valuable consideration was received by the dock company for the grant of running powers free of toll to the North Eastern Railway Company. If that assumption were true, and if the dock company, or any occupier of the lines, were bound to give similar powers to any, and every, company that chose to ask for them, possibly it might be said (adopting the phrase used in *Altrincham Union v. Cheshire Lines Committee* (d)), that the lines were "struck with sterility." Before proceeding to consider the applicability of that phrase, it may be noticed that Parliament very seldom, if ever, grants to one company valuable rights over the property of another without giving valuable consideration to the latter company: and, therefore, if the assumption made by the House of Lords in *Sculcoates Union v. Hull Docks* was correct, the principle laid down in that case cannot be of very general application.

The application of the phrase "struck with sterility."—This phrase appears to have been first used in *Coomber v. Berkshire J.J.* (e) to describe property which, "as long as the law is observed, cannot have any annual value in the hands of anybody." The best instance (though, it is believed, not given in any of the reported cases) is the surface of land dedicated to the public as a highway. No one will give any rent to become the occupier of the surface of an ordinary highway, though a tenant might be

(z) As in *R. v. Fletton*.

(a) As in *Altrincham Union v. Cheshire Lines Committee*.

(b) *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251, *supra*, p. 236.

(c) [1895] A. C. 136.

(d) (1885), 15 Q. B. D. 597, *supra*, p. 238.

(e) In the Court of Appeal, by BRETT, L.J. (afterwards Lord ESHER, M.R.) (1882), 10 Q. B. D. 267, at p. 282. In *North and South Western Junction Rail. Co. v. Brentford Union* (1887), 18 Q. B. D. 740, at p. 757, Lord ESHER, M.R., said: "If an Act of Parliament says that the occupier of the property is to hold on such conditions as would render the premises *incapable of commanding a rent*, then, in figurative terms, the premises are said to be struck with sterility." It is to be noticed that this statement does not use the phrase "incapable of creating a profit." Property may command a rent though the occupation of it does not create a profit.

found for a coal mine, or for gas or water pipes underneath it; and, if an Act be passed authorising the construction of a tramway on the surface, with power to charge fares for the carriage of passengers, a tenant could be found for the tramway. The highway is no longer struck with complete sterility. But the fertility of the soil (to adopt the same figure of speech) may be controlled by statute. If the Act authorising the construction of the tramways limits the fares, the rateable value of the tramway must be calculated subject to those limitations, because no tenant will give a rent calculated on a supposed profit which the law will not permit him to earn.

So far, the phrase is appropriate and useful. But it has been applied to hereditaments which are really of a different character. It was applied in *Altrincham Union v. Cheshire Lines Committee* (*f*) to the lines occupied by the committee, over which the North Western Railway Company had running powers, paying to the committee a fixed annual sum which was less than the true value of the running powers to the North Western Company. The line was said to be "struck with sterility" to any greater extent than the fixed annual payment, by the Act giving the running powers. It is submitted that the use of the phrase is misleading. Adopting the same figure of speech it may be said that the Act giving the running powers and fixing the payment to be made for them, did not strike the land with sterility, but merely directed who should reap the crops. The line, when made subject to the running powers, was more fertile than it would otherwise have been. The case would have been different had the Act limited the fares which the public could be charged. As it was, more traffic was carried, and more profit was earned, by the exercise of the running powers than would have been possible if the running powers had not existed. It is true that the profit did not go into the coffers of the Cheshire Lines Committee, but does that make any difference? Suppose that the bargain between the North Western Company and the committee had taken this form—that the committee should in the first instance receive all the earnings over the line, but should pay over to the North Western Company everything beyond 2,500*l.* a year (*g*). The surplus payable to the company would be in the nature of a ground rent, which cannot be deducted from the value of premises in order to arrive at the rateable value.

Again, suppose that the committee, in order to get rid of the onerous covenant with the North Western Company, agreed to

(*f*) (1885), 15 Q. B. D. 597, *supra*, p. 238.

(*g*) The claim to make a deduction from the total earnings in respect of the surplus paid over to the North Western Company might be disputed on the authority of *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 279, *infra*, p. 248.

pay them a capital sum of 100,000*l.*, and thereupon become entitled to take such tolls from the North Western Company as would have been payable if no special contract had ever existed: it would be impossible to contend that any deduction should be made from the earnings of the committee in respect of the sum of 100,000*l.* That would represent part of the price paid by the owner to acquire the hereditament, and he might as well claim a deduction for the cost of obtaining the Act of Parliament authorising the railway (*h*). In truth, the concession of running powers to another company very often represents the price paid to buy off an opposition to a bill, and may even be the necessary condition on which the bill is passed.

It is a fundamental principle that, if once profits are made, the ultimate destination of these profits is immaterial, and the occupier is rateable for the full value, even though he may be bound (either by contract or by statute) to hand over all the profits to his landlord (*i*), or to devote them to public purposes (*k*), or (as in the case of the owner of tithe rentcharge) to expend them in the salary of a curate (*l*).

It appears, therefore, that in the case of hereditaments occupied for the sake of making profits, the phrase "struck with sterility" ought to be applied only to those hereditaments where the profits are limited by statute or otherwise, and the phrase ought not to be applied to hereditaments where the profits are not so limited, though they may be divided among several persons, or may be payable ultimately to some person other than the actual occupier. If this view be correct, it seems that the phrase was misapplied in *Altrincham Union v. Cheshire Lines Committee* (*m*), and perhaps also in *Sculcoates Union v. Hull Docks* (*n*).

Decisions as to running powers tested by analogy to other cases.—It is now proposed to test, by a comparison with other cases, the group of decisions of which the second *Badgworth Case* (*o*) and *Altrincham Union v. Cheshire Lines Committee* (*p*) are the most prominent. In *R. v. Rhymney Rail. Co.* (*q*), the Bute trustees, who were owners of docks and wharves at Cardiff, let the wharves to the railway company; the company were the sole occupiers of the wharves, but by the agreement certain

(*h*) A claim of a deduction under this head was made, and rejected, in *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at pp. 204, 205.

(*i*) See *R. v. Parrot* (1794), 5 T. R. 593, *supra*, p. 128.

(*k*) *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, *supra*, p. 133.

(*l*) *R. v. Sherford* (1867), L. R. 2 Q. B. 503; see Chapter XXI., *infra*. See also *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276, *infra*, p. 249.

(*m*) (1885), 15 Q. B. D. 597, *supra*, p. 238.

(*n*) [1895] A. C. 136, *supra*, pp. 239—241.

(*o*) *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251, *supra*, p. 236.

(*p*) (1885), 15 Q. B. D. 597, *supra*, p. 238.

(*q*) (1869), L. R. 4 Q. B. 276.

wharfage dues payable on all goods shipped or unshipped at the wharves were reserved to the trustees, and were paid direct to them by the owners or consignees of the goods. It was held that the railway company, as sole occupiers of the wharves, were liable to be assessed for the full rateable value of the premises, including the wharfage dues. The following passage is taken from the considered judgment of the court (v) :

"It is clear that no rate in respect of these wharfage dues could be imposed on the trustees of the Marquis of Bute, who are occupiers of the docks only, and not of the wharves ; and, therefore, unless the appellants were liable to be rated in respect of the increased value of the wharves arising from these wharfage dues, the parish would be wholly deprived of any rate in respect of a very considerable part of the true value of the wharves. If the trustees had made no demise of the wharves, but had themselves remained in possession of them, as well as in receipt of the wharfage dues, they would have been rateable in respect of the entire value of the wharves, taking into account the dues in question. So, if the trustees had included in their demise to the appellants the right of receiving the wharfage dues, the appellants, even though liable to pay an increased rent equal to the amount of the dues, would in like manner have been rateable for the entire value of the wharves as enhanced by the dues. And it would appear very unreasonable and unjust that by an arrangement between the parties like that which exists in this case, and whereby the trustees give to the appellants the sole right of occupation, but reserve to themselves the right of receiving the dues, which form in substance a large part of the profits and value of the occupation, they should be able to exempt this part from all rateability.

"We are of opinion that the appellants, as sole occupiers of the wharves, are liable to be rated in respect of the full rateable value of the premises in their occupation, without regard to the precise amount of benefit which they themselves derive from such occupation. We consider the principle to be involved in the decision of the *Mersey Dock Case* (s). We had occasion to refer to this decision and to act upon it, in the recent case of *R. v. Sherford* (t), which has a very close application to the present case. In that case the incumbent of three united parishes claimed to deduct from the assessment upon him for his tithe rentcharge the salaries necessarily paid by him to two curates, and which, *pro tanto*, diminished his beneficial interest in the rentcharge ; but such a deduction, although sanctioned by a prior decision in the *Hackney Case* (u), was disallowed by this court upon the authority of the *Mersey Dock Case*, and we then pointed out the fallacy of confounding the rateable value of the property occupied with the remunerative value to the particular occupier" (v).

It is not stated in *R. v. Rhymney Rail. Co.* (y), from the judgment in which case the above extract is taken, that the agreement

(v) L. R. 4 Q. B. at p. 282.

(s) (1865), 11 H. L. Cas. 443.

(t) (1867), L. R. 2 Q. B. 503. See Chapter XXIII., *infra*, p. 444.

(u) (1858), E. B. & E. 1.

(v) See also *R. v. Woking* (1835), 4 A. & E. 40 ; *infra*, p. 344 ; and *Melbourne Tramway Co. v. Mayor, etc., of Fitzroy*, [1901] A. C. 153, *infra*, p. 345, note (d).

(y) (1869), L. R. 4 Q. B. 276.

between the railway company and the owners of the docks was expressly sanctioned by an Act of Parliament, but it is extremely likely that this was the case.

Summary of a valuation of a line of railway.—Let us now take the case of an ordinary line of railway, owned and worked at a profit by one and the same company, and free from the complicated questions which may arise in the case of a branch line worked under a lease (*z*), perhaps at a loss (*a*), or in the case of a line subject to running powers granted to other companies (*b*).

To such a case the “parochial principle” must be applied; that is to say, we must start with the receipts and expenses in the parish (*c*). Having deducted the latter from the former, we arrive at the net receipts attributable to line and stations. From the net receipts we deduct a portion attributable to the stations, and the remainder represents the net receipts attributable to the line, divisible between landlord and tenant. Having deducted the tenant’s share, the remainder is the gross value, or the gross estimated rental payable to the landlord, from which we subtract the “statutory deductions” for “repairs, insurance, and other expenses necessary to maintain the hereditament in a state to command the rent” (*d*). The remainder is the net annual (or rateable) value. In the pages immediately following we proceed to consider these various steps in detail (*e*).

Proof of the gross receipts.—The Railway and Canal Traffic Act, 1888 (*f*), by s. 48, enacts as follows :

“On any rating appeal, and before any court, where it may be material to show the receipts or profits of a railway company or canal company, or railway and canal company, it shall be lawful for the company to prove the same by written statements or returns verified by the affidavit or statutory declaration of the manager or other responsible officer, and any such statements or returns shall be *prima facie* evidence of the facts therein stated

(*z*) As in *South Eastern Rail. Co. v. Dorking* (1854), 3 E. & B. 491, *supra*, p. 216.

(*a*) As in *London and North Western Rail. Co. v. Cannock* (1863), 9 L. T. 325, *supra*, p. 213.

(*b*) As in *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, *supra*, p. 233; and in the two *Badgworth Cases*, *Midland Rail. Co. v. Badgworth* (1864), 34 L. J. M. C. 25, *supra*, p. 235, and *Great Western Rail. Co. v. Badgworth* (1867), L. R. 2 Q. B. 251, *supra*, p. 236.

(*c*) The question, on what year’s accounts are the calculations to be based, is considered *infra*, p. 254.

(*d*) See the definition of “net annual value” in s. 1 of the Parochial Assessments Act, 1836, and the definitions of “gross value” and “rateable value” in s. 4 of the Valuation (Metropolis) Act, 1869. Both Acts are set out in Appendix II.

(*e*) Specimens of valuations, in a tabular form, may be found in Ryde’s Met. Rat. App., at pp. 61, 62, 297, 302; in Ryde’s Rat. App. (1886—1890), at pp. 145, 215; and in Ryde and Konstam’s Rat. App. (1894—1904), at pp. 17—20, and 73—76. But these valuations must be read with the remarks in the following pages of this volume, on the details of the calculations.

(*f*) 51 & 52 Vict. c. 25.

with respect to such receipts or profits : Provided that the person by whom any such affidavit or statutory declaration is made shall in every case, if required, attend to be cross-examined thereon."

This section does not direct that the company shall, before the hearing, give notice of intention to prove the gross receipts by means of an affidavit : nor does it say that, if such notice be given, the other parties must give notice that they require the attendance of the person making the affidavit, for cross-examination. It would probably be best for the parties to give the notices above referred to, in order to avoid the danger of having to pay the costs of an adjournment (*g*).

So much for the mode of proof: the thing proved cannot generally be more than an estimate or an approximation, but the receipts for both passenger and goods must be ascertained as nearly as may be. The receipts from passengers travelling over the line in the parish must be ascertained (approximately) by taking a mileage proportion (*h*) of all fares paid for passing over that line : and where tickets are issued available by an alternative route in another parish (as frequently happens in the case of season tickets and return tickets), even the most minute examination of the company's books will not show the precise earnings in the parish. The examination of the books is always a costly proceeding, and companies cannot be compelled to—and as a rule do not—enter upon it until the appeal comes before the quarter sessions, and the valuer on behalf of the parish authorities has, in most cases, to make the best estimate he can. In *R. v. Essex JJ.* (*i*) it was held that a railway company were not bound to produce their books showing the gross receipts, on the hearing of an objection before the assessment committee under s. 1 of the Union Assessment Committee Amendment Act, 1864 (*k*). Of course, if a railway company refuse information as to gross receipts when they have in fact ascertained them, that is a fact which can be taken into account by the quarter sessions in dealing with the costs of an appeal.

In *R. v. Stockton and Darlington Rail. Co.* (*l*) the company had power to take a toll, but did not do so, being afraid that (if they did) they would lose certain mineral traffic : it was held that the toll could not be rated. COCKBURN, C.J., said, "We must assume

(*g*) In *London and North Western Rail. Co. v. Hampstead* (1897), Ryde and Konstam's Rat. App. (1894—1904), 14, where the company had not given notice of intention to use an affidavit, the London quarter sessions held that it was not too late for the respondents in a rating appeal to insist at the hearing on the attendance of the deponent for cross-examination.

(*h*) As to the measurement of the mileage, *vide infra*, p. 253 : as to receipts from goods traffic, see p. 252, under the head of "Terminals, Cartage, and Delivery."

(*i*) (1882), 46 J. P. 724.

(*k*) Set out in Appendix II., *infra*.

(*l*) (1863), 8 L. T. 422.

that the railway company are the best judges of their own interest." In *R. v. St. Pancras (m)*, the North London Company ran over the Blackwall Railway, paying to the Blackwall Company a fixed sum out of the fare of each passenger carried over the Blackwall Railway: it was held that in rating the North London Company, the sums paid over to the Blackwall Company should be deducted from the receipts, and COCKBURN, C.J., pointed out that in respect of those sums, the Blackwall Company would be rateable.

The government duty payable by the company in respect of passenger traffic must be deducted at some stage of the calculation, and may be conveniently deducted at the commencement, by bringing into account the gross receipts, minus the government duty.

Terminals, cartage, and delivery.—In dealing with receipts from goods traffic, these items may have to be considered. Terminals consist of that part of the charges made for the carriage of goods which is attributable to the accommodation provided and the services rendered in loading, unloading, despatching and receiving goods at the stations (*n*). The charges for cartage and delivery are for collecting goods before the journey on the railway begins, and for delivering them from the terminus where the journey has ended. These latter receipts are not earned on the railway at all, and must not be brought into account: and if any rates include cartage and delivery charges, the proportion attributable to those charges must be deducted. Where one company receives goods and despatches them over the line of a second company, to the station of a third company, under the railway clearing-house system, the first and third companies each receive for "terminal charges" a share, which is deducted from the total sum paid for carriage, and the remainder is divided between the three companies, in proportion to the mileage on each company's line.

In *R. v. Eastern Counties Rail. Co. (o)*, it was contended by the company, that, in calculating the value of a line from the total parochial earnings of the line in the parish, a deduction ought to be made of a sum equivalent to the terminals calculated on the clearing-house system (*p*), on the ground that this sum was earned by the stations, and not by the line. But the court held that the

(*m*) (1863), 32 L. J. M. C. 146.

(*n*) "Terminals" were distinguished from the charge for cartage and delivery in *Buckfastleigh and Totnes Rail. Co. v. South Devon Rail. Co.* (1874), 1 Nev. & Mac. 321; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (1874), 2 Nev. & Mac. 53.

(*o*) (1863), 32 L. J. M. C. 174; *S. C. sub nom. Eastern Counties Rail. Co. v. Great Amwell*, 27 J. P. 423.

(*p*) The case did not deal with through traffic, and the company therefore received the whole of the sums paid for carriage, the calculations of the terminal being made merely for the purpose of the rating appeal.

stations must be treated as only indirectly contributing to the profits of the line (*q*), and that the terminals, and the expenses incurred in earning them, were part of the general earnings and expenses of the line, and must be treated in the same way as any other part of the gross receipts and outgoings.

Where terminals are shared by two companies, it becomes difficult to apply this decision,—that terminals must be regarded as earned by the line, and must be spread over the whole line. In *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (*r*), the terminals were divided between two companies, which owned unequal lengths of line over which the goods were carried. It was held that the terminals must be divided equally between the two companies, even though less than half the mileage for which the fares were paid was on the line of the company appealing against the rate, which line was thus credited with a higher share of the terminal per mile run than the other line. The effect of spreading the terminal over the whole line for the purposes of rating, in this case, would be that one company would have been rated in respect of more—while the other company would have been rated in respect of less—than the actual receipts.

The effect of the two decisions above cited appears to be that where there are terminals (in the proper sense of the word), each terminal must be regarded as earned by the line of the company owning the station in respect of which the terminal is paid; and such terminal must be spread over the length of that company's line, over which the goods are carried (*s*); but where one and the same company owns all the line and both stations, the whole of the receipts for carriage of goods (including terminals) must be regarded as earned by the line and not by the stations. A further anomaly arises under the decisions above cited, where a third company intervenes, owning a piece of line, but no stations.

Measurement of mileage in calculating gross receipts.—It sometimes makes a considerable difference, where lines run into a long terminal station, whether (for the purpose of calculating the receipts in the parish) the running lines are regarded as ending where the station begins, or as extending to the buffer-stops. In *London and South Western Rail. Co. v. Lambeth* (*t*), the assessment sessions adopted the former method of measurement; but the latter method was adopted twenty-one years later by the

(*q*) *Vide supra*, p. 193.

(*r*) (1874), 2 Nev. & Mac, 53 (before the Railway Commissioners).

(*s*) What is to be done where the company owning the station own none of the line, is not clear.

(*t*) (1871), Ryde's Met. Rat. App. 60, at p. 63.

London quarter sessions, in *Great Eastern Rail. Co. v. City of London Union* (*u*), in which it was held that the buffer-stops, wherever placed, must be regarded as the termini of the running line (*x*). The point affects both the calculation of the gross receipts and also the question how much of the premises can be treated as a station, indirectly contributing to the earnings of the railway. If the running lines are measured into a terminus, which is covered by a roof, it seems wrong, in calculating the structural value of the station, to take into account the whole of the structural value of the roof, which covers the running line as well as the platform (*y*).

On what year's accounts are the calculations to be based?—

In *R. v. London, Brighton and South Coast Rail. Co.* (*z*), a point was decided which throws some light on this question. The date of the rate appealed against in that case was November 20th, 1847, and the calculations for the company were based on accounts made up to June 30th, 1847, but published on August 10th. Between June 30th and November 20th the value of the working plant had been very largely increased. On this account the company claimed a deduction, and it was held that they were entitled to it. COLERIDGE, J., said :

“The sessions ought to avail themselves of every light that can be afforded them down to the latest period antecedent to the actual making of the rate, in order to bring it to the greatest possibly accuracy. The overseers, in making a prospective rate, are to make it on the supposed prospective value ascertained by them, as well as they can, from the latest evidence in their power as to antecedent value.”

It may be sufficient here to point out (1) that this decision still leaves it an open question whether facts happening *after* the date of the rate may not be taken into account, on the assumption that the hypothetical tenant would at the date of the rate have foreseen what was going to happen ; and (2) that the considerations which apply to an appeal against a rate outside the metropolis are somewhat different from those which apply to an appeal against a valuation list inside the metropolis (*a*).

(*u*) Ryde's Rat. App. (1891—1893), 148.

(*x*) This decision appears to be confirmed by the decision of the Court of Appeal in *Stockport Union v. London and North Western Rail. Co.* (1898), 78 L. T. 180, *supra*, p. 196.

(*y*) But see also p. 198, *supra*.

(*z*) (1851), 15 Q. B. 313, at p. 367.

(*a*) This question is further considered, *infra*, p. 277, in the chapter relating to gasworks and waterworks.

Working expenses.—The calculation of working expenses in a particular parish can only be an approximate estimate. The locomotive expenses are estimated by ascertaining the average cost per train mile over the whole system, and then multiplying the number of train miles in the parish by some figure, higher or lower than the average, according as the expenses in the particular parish are estimated to be higher or lower than the average. Sometimes (but not always) the locomotive expenses for passenger train miles and for goods train miles are separated. The difference may be of importance, as the locomotive expenses for goods are generally far heavier than those for passenger traffic. In *Midland Rail. Co. v. St. Mary, Islington* (b), the engines running through the parish of Islington ran over the underground railway outside the parish, and consequently had to burn smokeless coal which was more expensive: it was held by the assessment sessions that the additional expense incurred in Islington, in consequence of causes affecting the traffic outside the parish, was rightly taken into account in rating the line in Islington.

At some stage, or in some form, a deduction must be made for depreciation of rolling stock in addition to the cost of ordinary repair. However carefully stock may be repaired, there must come a time when it is worn out and must be renewed. If the cost of renewal is included among the ordinary locomotive and carriage and waggon expenses of the company, then there is no need to put down a separate item for depreciation of rolling stock. But in some of the earlier cases relating to railways, depreciation of stock was not included among the working expenses, but among the allowances to be made to the tenant (c). The question whether the average depreciation over a number of years, or the actual depreciation in one year, should be taken is a question of fact for the sessions (d).

The carriage and waggon expenses are calculated separately from each other, and in the same way as the locomotive expenses, by estimating the cost per train mile in the parish.

In *London and North Western Rail. Co. v. Wigan Union* (e), the company, who did their own carriage and waggon repairs, claimed to add to the actual cost of such repairs 10 per cent. for trade profits, on the ground that the company were carrying on the business of manufacturers and repairers of railway stock, and

(b) Ryde's Rat. App. (1886—1890), 139.

(c) See for example, *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18. at p. 23.

(d) *Great Eastern Rail. Co. v. Haughley* (1866), L. R. 1 Q. B. 666. Compare a similar decision as to income tax; *Cunard Steamship Co. v. Coulson*, [1899] 1 Q. B. 865.

(e) (1876), 2 Nev. & Mac. 240, at p. 246.

if that were the business before the court, they would be entitled to the ordinary deductions in respect of trade profits. But the Railway Commissioners disallowed the claim.

The miscellaneous and general expenses for the particular parish are generally calculated by taking the percentage or proportion of the gross receipts in the parish which the expenses over the whole system bear to the gross receipts of the whole system. By subtracting from the gross receipts in the parish the aggregate of the locomotive, carriage and waggon and miscellaneous expenses in the parish (*f*), we arrive at the net receipts in the parish, *plus* rates (*g*), attributable to the line and stations.

Deduction for income tax; whether allowable.—There have been conflicting decisions upon this point. In *R. v. Great Western Rail. Co. (h)*, a deduction for income tax, “in respect of the charge on the occupation payable by the tenant,” was allowed, subject to a protest against the unsatisfactory statement of the claim and the shortness of the argument thereon. But in *R. v. Southampton Dock Co. (i)*, a claim for a deduction of income tax, “in respect of the estimated profit of the tenant,” was expressly disallowed. In the *Hackney Tithe Case (k)*, the rector claimed a deduction for “property tax,” and in the judgment it is merely said (*l*), “For what is called the tenant’s property tax he is certainly entitled to an allowance.” This decision appears to be in direct conflict with the decision above referred to in *R. v. Southampton Dock Co.*, and it is believed that in dealing with the railway and other companies, the decision in the *Southampton Dock Case* is now generally, if not invariably, followed in practice.

It is submitted that (so far, at least, as railways and other trading companies are concerned) the difficulty is caused by treating what is really a question of fact as if it were a question of law. The main scheme of all calculations relating to trading companies is to ascertain the net profits and to deduct therefrom the share belonging to the tenant, the remainder (subject to a

(*f*) The expenses here referred to do not include the expenses of maintaining and renewing the line. These expenses, which constitute the statutory deductions, are deducted at a later stage after the gross value (or gross estimated rental) of the line in the parish has been ascertained: *vide infra*, p. 260.

(*g*) The rates may be deducted either as part of the working expenses or (as is suggested in the text) at the last stage of the calculation. The difference is one of form merely, the result being the same in either case. The right to make the deduction is established by *Tyne Improvement Commissioners v. Chirton* (1862). 32 L. J. M. C. 192; and *R. v. Hull Dock Co.* (1824), 3 B. & C. 516, at pp. 527, 528. The last mentioned case was decided before the passing of the Parochial Assessments Act, 1836, but the reasoning of the judgment is conclusive.

(*h*) (1846), 6 Q. B. 179, at p. 205.

(*i*) (1851), 14 Q. B. 587, at p. 611.

(*k*) *R. v. Goodchild* (1858), E. B. & E. 1.

(*l*) E. B. & E., at p. 48.

deduction for the maintenance and renewal of the hereditament) being the rent payable to the hypothetical landlord. So far as the income tax on the landlord's rent is concerned there is no difficulty: it will be paid out of the rent, and whether it be 8*l.* or 1*s.* in the pound, the rent will be unaffected. The difficulty is limited to the income tax payable by the tenant. Suppose the tenant's capital to be put down at 100,000*l.*, and the percentage of profit allowed thereon to be seventeen and a half per cent. or 17,500*l.* Do we mean that this sum is to be received by the tenant, subject to a deduction for, or free of, income tax? If we mean the former, then no separate head of deduction for income tax can be claimed, because it will be deducted from the 17,500*l.*, which is the tenant's share of the profits; but if we mean the latter, then a separate deduction for income tax payable by the tenant must be made. For if nothing less than 17,500*l.*, free of income tax, will satisfy the tenant's requirements, and if the whole of the remainder of the gross receipts are swallowed up by the working expenses, rates, maintenance (and the necessary sinking funds to provide for it), and the landlord's rent, there is no fund out of which income tax on the tenant's profits can be paid.

Deduction for stations.—Whether there is, or is not, a station within the parish for which the rate is made, a deduction must be made from the net receipts attributable to both lines and stations, to represent the contribution made from the profits of the line in the parish towards the rent payable for the stations over the whole system. The principle on which this deduction is claimed, and the question of the amount of the deduction has been already considered (*m*). Where there is a station in the parish for which the rate is made, the value of the station must be ascertained, and added to the value of the line. The method of valuing stations has been already considered (*n*).

Tenant's share of net profits.—Having ascertained the net profits attributable to the line in the parish, apart from the stations, we have next to determine what is the tenant's share of those profits. Obviously the hypothetical tenant will not give a rent equal to the whole of the net profits, for he would then have nothing to induce him to become a tenant, and to be liable for the rent, and to provide the necessary rolling stock, stores, and capital to carry on the concern. That some deduction for the tenant's share must be made is never disputed; but the amount of that deduction is seldom agreed. As in the case of gasworks and waterworks (*o*), the tenant's share is estimated by taking some

(*m*) *Vide supra*, p. 193.

(*n*) *Vide supra*, p. 197.

(*o*) *Vide infra*, p. 279.

percentage (p) on the tenant's capital required : but the rate of percentage and the amount of the capital are both likely to be disputed.

The amount of the tenant's capital is sometimes estimated by a mere rule of thumb. It is said that the tenant's capital required for the whole system of a railway is equal to the gross receipts over the whole system, and that, consequently, the share of the tenant's capital attributable to a particular parish is equal to the gross receipts in that parish. The rule has the merit of extreme simplicity, but its correctness depends entirely on the correctness of the first of the two propositions included in the rule. Whether that proposition is true or not is a difficult question of fact : and it may be complicated by arrangements between the company to be rated and another company, whereby the latter company provide all or part of the rolling stock used on the former company's line (q), or the two companies provide stock to be used over the two systems, at the joint expense of the two companies.

Another method of calculating the tenant's capital is to ascertain the value of the rolling stock, tools, furniture, clothing, and chattels of every kind (r), used over the system, and the floating capital required (s) : to ascertain what percentage of the gross receipts over the whole system the total sum thus arrived at represents : and to apply the same percentage to the gross receipts in the particular parish as representing the proportion of the tenant's capital attributable to that parish. The actual value of the stock (as depreciated) at the date of the rate, and not the prime cost, must be taken (t) : and the question of the amount of the depreciation is a question of fact for the sessions, who must determine in what way the amount is to be calculated (u).

The question whether a floating capital was required by a railway company was raised in *R. v. North Staffordshire Rail. Co.* (v), as if it were a question of law, but the Queen's Bench appear to have regarded it as a question of fact which they were unable to decide. The company contended that it was necessary

(p) Or percentages, for sometimes different rates of interest are taken on different parts of the tenant's capital.

(q) See *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (1874), 2 Nev. & Mac. 53 (before the Railway Commissioners).

(r) It is often difficult to determine whether machinery is to be regarded as a chattel (and therefore as part of the tenant's capital) or as part of the rateable hereditaments : see *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68 : cited in Chapter XXV., where the question is more fully considered.

(t) The Surrey quarter sessions, in *South Eastern Rail. Co. v. Dorking Union*, Ryte and Konstan's Rep. App. (1894—1904), 71, at p. 81, made a detailed valuation of tenant's capital on this method.

(u) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 207 ; *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68.

(v) *Great Eastern Rail. Co. v. Houghley* (1866), L. R. 1 Q. B. 666, (1860), 30 L. J. M. C. 68.

to have a floating capital for providing stores (such as rails, sleepers etc.) (*x*), for paying wages, and for giving credit to customers for goods traffic (*y*). In considering the amount of floating capital, it must be remembered that, in the case of passenger traffic, the business is done for ready money, and in part (so far as receipts for return and season tickets are concerned) for money paid in advance (*z*). But it is believed that in practice (where the tenant's capital is not calculated by the rule of thumb stated above) a "reasonable amount" of floating capital is generally allowed (*a*).

The rate of interest to be allowed on the tenant's capital is entirely a question of fact for the overseers in the first instance, and then for the sessions, to determine (*b*). Very different rates of interest have been from time to time claimed, and allowed; and in several cases different rates of interest have been allowed on different parts of the tenant's capital. In *R. v. Grand Junction Rail. Co.* (*c*), 5 per cent. for interest on the tenant's capital, added to 20 per cent. thereon for tenant's profits, was allowed. In *R. v. Sheffield Gas Co.* (*d*), 20 per cent. was allowed. In *R. v. Mile End, Old Town* (*e*), 25 per cent. on the floating capital, and 10 per cent. on the stock of coals, etc., in hand, were allowed. In *R. v. Southampton Dock Co.* (*f*), 25 per cent. was allowed. The Railway Commissioners, in *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (*g*), allowed 5 per cent. on the floating capital, 10 per cent. on stores, and 20 per cent. on the remainder of the tenant's property. At the London quarter sessions the practice has been to allow 17½ per cent. on the whole of the tenant's capital (*h*).

(*c*) Some, if not all, of these are open to the objection that they are landlord's stores, which the hypothetical tenant would not be expected to provide; but the point appears to have been overlooked.

(*y*) In effect the two latter claims are the same. Strictly speaking, the tenant does not provide the sum for which credit is given: he provides capital to pay wages and other outgoings until the period for which credit is given has expired. The sum due to the tenant from his customers includes his profit as a carrier, and to that extent does not represent capital provided by the tenant at all.

(*z*) The case is very different from that of a gas company: *vide infra*, p. 280.

(*a*) The Railway Commissioners allowed it in *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor and Glandford Brigg Unions* (1874), 2 Nev. & Mac. 53; and in *London and North Western Rail. Co. v. Wigan Union* (1876), *ib.*, p. 240. The London quarter sessions allowed it in *London and North Western Rail. Co. v. Hampstead* (1897), Ryde and Konstam's Rat. App. (1894—1904), 14; and the Surrey sessions allowed it in *South Eastern Rail. Co. v. Dorking Union* (1898), Ryde and Konstam's Rat. App. (1894—1904), 71.

(*b*) See *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 206; and *cf. R. v. Sheffield Gas Co.* (1863), 32 L. J. M. C. 169, at p. 173.

(*c*) (1844), 4 Q. B. 18, at p. 23.

(*e*) (1847), 10 Q. B. 208, at p. 211.

(*d*) (1863), 32 L. J. M. C. 169.

(*f*) (1851), 14 Q. B. 587, at p. 592.

(*g*) (1874), 2 Nev. & Mac. 53. But *cf. London and North Western Rail. Co. v. Wigan Union* (1876), *ib.*, p. 240.

(*h*) See *South Eastern Rail. Co. v. Lewisham* (1871), Ryde's Met. Rat. App. 52, at p. 56; *Midland Rail. Co. v. St. Mary, Islington*, Ryde's Rat. App. (1886—1890), 139. In *London and North Western Rail. Co. v. Hampstead* (1897), Ryde and

Cost of maintenance of line.—There are two ways of estimating the statutory deductions for this item. One is to ascertain the cost per train mile over the whole system, and to multiply this figure by the train miles run in the particular parish. The other is to ascertain, as nearly as may be, the actual expenses in the parish.

The former method is at best a rough one. For some expenses (*e.g.*, the cost of maintaining fences) are wholly independent of the number of train miles run. Nor does even the cost of maintaining the rails themselves vary precisely in proportion to the number of train miles run over them. Suppose that on a branch line only two trains per day are run: the cost of maintenance per train mile on that branch would probably be very much higher than the cost on a line where fifty trains per day are run. If so, then an increase in the number of train miles will diminish the cost per train mile. On the other hand, where the number of trains running per day is so high as to interfere with the work of maintenance and to render night work necessary, the cost per train mile will be increased. Again, owing to the action of the wheels when the brakes are applied, the cost per train mile is higher where trains are constantly being stopped than it is where they are not.

The question how far the maintenance of a tunnel, or a bridge, can be considered as part of the general expenses of the line, and not as local expenses, has been considered already (*i*).

Renewal fund allowed though not in fact put aside by the company.—There was a conflict of decisions in the earlier cases as to the deduction claimed for the depreciation of rails and sleepers (over and above the cost of ordinary repairs) where the company had not in fact set aside a fund on this account. In the first *Tilehurst Case* (*k*), the claim was disallowed; but this decision was, after consideration, overruled in *R. v. London, Brighton and South Coast Rail. Co.* (*l*), where COLERIDGE, J., said:

“We think that the company are entitled to a deduction on this head. We cannot make a substantial distinction between this and house property,

Konstam's Rat. App. (1894—1904), 14, the judgment stated that the usual practice (of the London quarter sessions) of allowing $17\frac{1}{2}$ per cent. had not been departed from; but the witnesses on both sides had in fact applied this percentage to *part* only of the tenant's capital, and had put lower percentages on other parts; and it is not clear that the court intended to allow $17\frac{1}{2}$ per cent. on the whole. In *South Eastern Rail. Co. v. Dorking Union* (1898), Ryde and Konstam's Rat. App. (1894—1904), 71, the Surrey quarter sessions allowed $16\frac{1}{2}$ per cent. on the whole of the tenant's capital, including stores: and the chairman said, “We have come to that conclusion after a great deal of consideration, and we are not likely to alter that figure without a great deal more consideration in any future case.”

(*i*) See the second *Tilehurst Case*, *R. v. Great Western Rail. Co.* (1852), 15 Q. B. 379, 1085, *supra*, pp. 203—212.

(*k*) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 203.

(*l*) (1851), 15 Q. B. 313, at p. 366.

or any other of a perishable nature which must require renewal; and although we think that the company ought to set apart the sum which they claim to deduct, we cannot compel them to do so in this indirect way. And we think that, whenever the time shall come for actually making the restoration, they will be estopped from claiming more than that annual deduction which they now insist on, exactly as a landlord could not claim to deduct the expense of restoration made by him of a house."

This decision was confirmed in *R. v. Great Western Rail Co.* (*m*), in *R. v. Wells* (*n*), and again in *Dewsbury and Heckmondwike Waterworks v. Penistone Union* (*o*), and has been generally acted on in practice.

(*m*) (1852), 15 Q. B. 1085, at p. 1087.

(*n*) (1867), L. R. 2 Q. B. 542: *vide supra*, p. 186.

(*o*) (1885), 16 Q. B. D. 585. The point for which the case is here cited was not raised in the Court of Appeal: see 17 Q. B. D. 384.

CHAPTER XV.

WATERWORKS AND GASWORKS.

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Preliminary.—These two kinds of property so closely resemble each other, and are rated on principles so nearly alike, that it will be convenient to consider them together. The following are the principal questions which have been raised :

1. Whether the exercise of the right to lay down pipes, and send through them water, or gas, amounts to an occupation of

land? This question has now for many years been answered in the affirmative (*a*).

2. Where one body of persons has constructed, and another body has used pipes and works, it may be necessary to determine which of the two bodies is in occupation (*b*).

3. Whether in valuing land containing a spring the profits earned by the water company are to be taken into account (*c*)? This question has always been answered in the affirmative.

4. Whether in valuing the works, pipes, etc., of a gas company, the profits earned by the company are to be taken into account (*d*)? This question must be *now* answered in the affirmative.

5. What is the proper method of valuing waterworks and gasworks, as a whole, when occupied by a trading company (*e*), and on what principle is the value of the whole undertaking to be apportioned among the several parishes into which the undertaking extends (*f*)?

6. Whether, in rating gasworks or waterworks occupied by municipal corporations, or similar public bodies, when the profits earned by the occupiers are devoted to public purposes, the occupiers are rateable (*g*)? This question is *now* always answered in the affirmative.

7. Whether, in rating municipal corporations, or similar bodies, the profits actually earned by the occupiers are the proper basis for calculating rateable value (*h*)? The law on this point can hardly be said to be settled.

Occupation of land by means of pipes.—It appears that before 1783 it was not the practice to rate water-pipes laid in the ground (*i*). But in 1811 they were in effect held to be rateable. In *R. v. Mayor, etc., of Bath* (*k*), the corporation were the owners of land containing springs outside the city, and had made reservoirs and laid pipes to bring the water through several parishes into the city, and in the rate appealed against they were rated in the parish which contained the reservoirs and springs for *the whole* of the profits of their works: it was held that the corporation were rateable in the parish containing the reservoirs and springs, but were not rateable there for the whole of the profits. The judgment expressly left open the question in what other parishes and in what proportions the corporation were rateable. But two

(*a*) *Vide infra*, p. 264.

(*b*) *Vide infra*, pp. 265—267.

(*c*) *Vide infra*, p. 268.

(*d*) *Vide infra*, p. 272.

(*e*) *Vide infra*, p. 275.

(*f*) *Vide infra*, p. 281.

(*g*) *Vide infra*, p. 289.

(*h*) *Vide infra*, pp. 291—304.

(*i*) See *Atkins v. Davis* (1783), Cald. 315; 1 Const. 178 n.; a case decided on the Statute of Hue and Cry, 27 Eliz. c. 13.

(*k*) (1811), 14 East, 609.

years later, in *R. v. Rochdale Waterworks Co. (l)*, the company who had water-pipes (without reservoirs or other works) in the parish for which the rate was made, were held rateable as occupiers of the pipes. The decision was followed without dispute, as to the pipes of a gas company, in *R. v. Birmingham Gas Co. (m)*. In *R. v. Brighton Gas Co. (n)* an attempt was made to show that the company were not in occupation of land by means of their pipes, because they had no power to break up the roads without the consent of the town commissioners; but the court held the company rateable. In *R. v. Chelsea Waterworks Co. (o)*, the authority of the cases cited above was admitted, but an attempt was made to show that they did not apply to the company's pipes, where another person was in occupation of the surface, and was rated for such occupation. The court, however, held that this made no difference. A final attempt to escape from rateability was made in *R. v. West Middlesex Waterworks (p)*, when the company were rated for a conduit main under the highway, used only for conveying water from a pumping station to a reservoir. WIGHTMAN, J., delivering the judgment of the court, said (*q*):

"The first question is, whether the company are rateable for their mains which are laid under the surface of the highway, without any freehold or leasehold interest in the soil thereof being vested in the company. We think they are. These mains are fixed capital, vested in land. The company is in possession of the mains buried in the soil, and so is, *de facto*, in possession of that space in the soil, which the mains fill (*r*) for a purpose beneficial to itself. The decisions are uniform in holding gas companies to be rateable in respect of their mains, although the occupation of such mains may be *de facto* merely, and without any legal or equitable estate in the land where the mains lie, by force of some statute" (*s*).

The decisions above quoted are not inconsistent with *Chelsea Waterworks Co. v. Bowley (t)*, in which it was held that the company were not liable to land tax in respect of their pipes under the public streets. For Lord CAMPBELL, C.J., in delivering the considered judgment of the court, said (*u*):

"We by no means feel ourselves at liberty to overrule these cases [*i.e.*, the cases above cited, as to poor rate], or even to express a doubt whether they

(*l*) (1813), 1 M. & S. 634.

(*m*) (1823), 1 B. & C. 506.

(*n*) (1826), 5 B. & C. 466.

(*o*) *Cf. R. v. Mersey and Irwell Navigation* (1829), 9 B. & C. 95, at p. 112.

(*p*) (1833), 5 B. & Ad. 156.

(*q*) (1859), 1 E. & E. 716.

(*r*) See 1 E. & E., at p. 720.

(*s*) Compare the judgment of the House of Lords in *Holywell Union v. Halkyn District Mines Drainage Co.* [1895] A. C. 117, *supra*, pp. 47, 51, which is conclusive of the rateability of underground pipes.

(*t*) (1851), 17 Q. B. 358. This case was discussed, but not overruled by the House of Lords, in *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416; it was pointed out that *Chelsea Waterworks Co. v. Bowley* was not easily reconcilable with some of the reasons given in *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705: *vide infra*, p. 267.

(*u*) 17 Q. B., at p. 361.

were rightly decided. But 'land,' like the word 'inhabitant,' which likewise occurs in the statute 43 Eliz. c. 2, has various meanings ; and it may, in that statute, passed to throw a charge upon the *occupier*, mean the ground on which a chattel is deposited in the exercise of an easement, although in other Acts of Parliament it means a legal interest in the soil. This is the meaning which we think it bears in the Land Tax Acts."

Permission to use land ; when does it confer occupation ?—

The construction of a reservoir, or the laying down of pipes, may be admitted to amount to an occupation of land, and yet it may still have to be decided who is the occupier. In *R. v. Chelsea Waterworks Co. (x)*, the Crown had "given, granted, and assigned" to the company a pond situated in St. James' Park, "to be converted into reservoirs, and to be used and enjoyed by the company," during the pleasure of the Crown. The company made and used the reservoir, and subsequently, on the requisition of the Crown, had bricked the sides and bottom, and enclosed it with a railing to prevent accidents. The deputy ranger of the park had taken the fish in the reservoir, the company not objecting. It was contended for the company, that they had no occupation of, but only an easement in, the reservoir : but the court held that the company's interest in the reservoir was not distinguishable from their interest in the pipes, for which they were clearly rateable. Lord DENMAN said :

"Their interest [in the reservoir] is at will only ; but a tenant at will is, until the will be determined, an occupier of the land (*y*). The company appear to us to have the exclusive right in a portion of the soil, though for a limited purpose only."

In *R. v. Stevens (z)*, the Secretary of State for War had granted to the appellants (who had entered into a contract with the Government to supply gas) a "licence to use" the gasworks at Aldershot, by a deed which provided that it should not be a lease, or in the nature of a lease, or an agreement for a lease, and that the licence should be revocable at any time by writing. It was held that until the licence was revoked, the appellants were occupiers, whether there was a tenancy or not ; and that "a licence to use is a liberty to occupy."

In *Mayor, etc., of Southport v. Ormskirk Union (a)*, under a local Act, the local board of the township of Birkdale had the exclusive right of laying gas mains and pipes within the township,

(*x*) (1833), 5 B. & Ad. 156.

(*y*) The question of occupation is always rather a question of fact than of title, or of conveyancing law : see pp. 51—54, *supra*. See also *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705, *infra*, p. 267.

(*z*) (1865), 12 L. T. 491.

(*a*) [1893] 2 Q. B. 468 ; affirmed in C. A. [1894] 1 Q. B. 196 ; Ryde's Rat. App. (1891—1893), 355, 438.

and were bound to keep the mains in the township in good repair and condition, and to afford the corporation of Southport the use of the same for the supply of gas for public and private purposes within the township, in consideration of certain payments. The local Act incorporated certain sections of the Gasworks Clauses Act, 1847, under which the Local Board of Birkdale had power to lay down and alter pipes and mains. The Local Board of Birkdale had, in fact, laid down and repaired the mains, and the Corporation of Southport had used them for the supply of gas, and had made the service connections with the mains. It was held by the Queen's Bench Division, and by the Court of Appeal, that the corporation were not the occupiers. CAVE, J., said (*b*) :

"The Local Board of Birkdale are the owners of these gas mains, and they have granted, or rather the Act of Parliament for them has granted, to the Corporation of Southport the use of the same, not generally, but simply for the purpose of the supply of gas, so that all that is taken out of the local board is the use of the mains for the particular purpose, the supply of gas and nothing else, and all other rights remain in the local board.

"The case is rendered somewhat more difficult by the fact that, *prima facie*, the use of the mains for the supply of gas is the only use that it is contemplated shall be made of them (*c*) ; but I do not think that that ought to affect our decision. When a man takes a quantity of cattle on to his land, it may be that he has taken as many as the land will feed, and that he does not contemplate any other use being made of the land beyond the eating of the grass by the cattle ; but yet the person who takes the cattle in remains the occupier of the land, and the person whose cattle are taken in does not become an occupier ; his right is a strictly limited one, and the general rights attending occupation remain in the person who takes the cattle in (*d*). So in the present case it seems to me that the rights of the corporation are strictly defined, and are limited to the use of these pipes for the purpose of delivering their gas. All other rights in the pipes remain in the local board : they are bound to repair them ; they may take them up, and relay them when necessary by reason of their being worn out ; they may alter their direction, to a certain limited extent no doubt, if it is found that they are too near the surface or too deep down in the ground."

Observations on the Southport Case.—So far as this case lays down a general principle of law, its correctness cannot be doubted :

(*b*) [1893] 2 Q. B., at p. 474 ; Ryde's Rat. App. (1891—1893), at p. 359. The general rule laid down in the judgment is stated *supra*, p. 40.

(*c*) This understates the argument against the corporation, which was that the use of mains for the supply of gas was the only use that was possible. See also *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156, *supra*, p. 265, where the exclusive right to use land for a limited purpose only was held sufficient to constitute occupation.

(*d*) To make the hypothetical case analogous, one must assume that by statute the landowner was bound to take in the cattle of one owner, and of nobody else, and that the landowner was prohibited from turning his own cattle on the land. The judgment seems to ignore the difference between the two cases. The real question was whether the local Act had left the "general rights attending occupation" in the hands of the Local Board.

but the writer ventures to express his doubt whether the general principle was correctly applied to the particular facts, for the following reasons. The decision of the Court of Appeal in *Mayor, etc., of Southport v. Ormskirk Union* (*e*) was delivered shortly before, and is quite consistent with, the decision of the same court in *Halkyn District Mines Drainage Co. v. Holywell Union* (*f*), which latter decision was reversed by the House of Lords (*g*). The *Halkyn Case* may almost be said to be an *a fortiori* case. For there the Drainage Company, who were held rateable for underground tunnels used for draining mines, were entitled to use those tunnels *only* for the purpose of drainage, and the mining companies had (and in fact exercised) the right of using the tunnels for the purpose of laying down tramways: whereas in *Mayor, etc., of Southport v. Ormskirk Union*, the Corporation of Southport had the right to use the gas mains for the only purpose for which they were capable of being used. The only right (as distinguished from the duty of repairing) vested in the Local Board of Birkdale was the right to alter the position of the pipes as occasion required; but in *R. v. East London Waterworks Co.* (*h*), paving commissioners had a similar right, and notwithstanding that fact, the company were held to be occupiers of the land in which their pipes were laid. At the same time, it must be remembered that the question of occupation must be determined by the whole of the circumstances of each case, and, therefore, it is dangerous to pick out a single detached circumstance, and to say that it is immaterial because it was considered immaterial in another case.

Rateability of gas and water pipes under local Acts.—There have been several decisions as to the effect of local Acts imposing rates, and the general rule appears to be that where the local Act uses the word “land,” that word must be construed in the same sense as in 43 Eliz. c. 2, and therefore gas companies and water companies are rateable (*i*). But other general words may have different meanings according to the context: thus the word “hereditaments” has been held in one Act to include (*k*), and in another not to include (*l*) the pipes of a gas or water company.

(*e*) [1894] 1 Q. B. 196; Ryde's Rat. App. (1891—1893), 438.

(*f*) (1893), 69 L. T. 705. The decision in the Queen's Bench, which was ultimately upheld by the House of Lords, is reported in Ryde's Rat. App. (1891—1893), 338.

(*g*) (1894), 71 L. T. 818; [1895] A. C. 117; *vide supra*, p. 47.

(*h*) (1852), 18 Q. B. 705, at p. 713: in the course of the argument, Lord CAMPBELL, C.J., suggests that “the company may have a movable freehold.”

(*i*) See *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705.

(*k*) *R. v. Shrewsbury Paving Trustees* (1832), 3 B. & Ad. 216.

(*l*) *East London Waterworks Co. v. Mile End, Old Town* (1851), 17 Q. B. 512. Cf. *Colebrooke v. Tickell* (1836), 4 A. & E. 916, and *R. v. Barker* (1837), 6 A. & E. 388.

The word "tenements" has been held in some Acts to include (*m*) and in others not to include the pipes of a water company (*n*).

The measure of the value of a spring belonging to a water company.—In *R. v. New River Co.* (*o*) the company were rated for land at Little Amwell, in Hertfordshire, which contained a spring. The sessions found that the land alone without the spring, if it were not covered with water, was of the annual value of 5*l.*; that the whole profits of the company arose from the sale of the water, no part of which was distributed in Little Amwell, nor was any of the money received for it by the company, nor did any of it become due there; and that if the advantage which the company derived from the use of the spring might by law be included in the rate upon the land, the land and the spring of water together were of the annual value of 300*l.*, at which they were rated (*p*). The court held that the rate on the sum of 300*l.* must be confirmed. Lord ELLENBOROUGH, C.J., said (*q*) :

"Here is land, and water enclosed in a basin upon the land, which falls within the legal description of land; and although a considerable portion of the profits of such water is derived from pipes, through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain head; and in cases of this kind it is enough to ascertain the local value of the property, without inquiring whether it yields a return on the spot. . . . The property is locally valuable in the parish where it is rated, although that value is derived from extrinsic circumstances, and although the profits are actually received elsewhere."

This decision is one of many which show how the courts gradually deduced from the statute 43 Eliz. c. 2, the principle which was subsequently embodied in the definition of net annual value given by s. 1 of the Parochial Assessments Act, 1836 (*r*). Since the passing of the Act of 1836, the rule (which before that date was not consistently followed) has become compulsory and of universal application, viz., that rateable value is measured not by the profits of the land, but by the rent which may reasonably be expected for the land. As long as it was possible to contend that rateable value depended on the profits of the land, it was necessary to consider where the profits were earned, in order to

(*m*) *New River Co. v. St. Pancras* (1880), 45 J. P. 75.

(*n*) *R. v. Manchester and Salford Waterworks Co.* (1823), 1 B. & C. 630, followed in *R. v. Mosley* (1823), 2 B. & C. 226; see also *East London Waterworks Co. v. Mile End, Old Town* (1851), 17 Q. B. 512.

(*o*) (1813), 1 M. & S. 503.

(*p*) It had been already held, in *R. v. Miller* (1777), 2 Cowp. 619, that land increased in value by the existence thereon of a mineral spring should be rated at such increased value.

(*q*) 1 M. & S., at pp. 508, 509.

(*r*) Set out in Appendix II., *infra*.

see to what land they must be attributed. But the rent of land is not necessarily fixed by the profits which may be earned on the land or from the produce of the land : most of the dwelling-houses near London command a higher rent because of the facilities which they offer for making profits elsewhere. As long as it is borne in mind that rent, and not profit, constitutes the measure of rateable value, it will be clear that the decision in *R. v. New River Co.* (s) is based on the principle adopted in the Parochial Assessments Act, 1836. It is obvious that a water company wanting a supply of water would be willing to give a higher rent for land containing a spring than for land without a spring ; and they would probably give for land containing a spring a higher rent than a tenant who would use the land only for ordinary agricultural purposes. How much higher rent the water company would give depends upon circumstances. If there were many equally suitable springs available for a water company, they would give a rent very slightly, if at all, higher than an agricultural rent. But the probability is that some of the springs would be further from the town requiring the supply of water, and the additional expense of laying longer mains would induce the company to offer a lower rent for the more distant sites, and a higher rent for the nearer sites. And the owner of the nearest site, while he would almost certainly be able to exact a rent higher than a mere agricultural rent, must yet be careful not to demand so high a rent as to drive the company to take a more distant site at a lower rent.

In *Liverpool Corporation v. Llanfyllin Union* (t) it was held that, in calculating the rateable value of a reservoir, it was right to take into account certain unusual expenditure incurred in acquiring the site, even though it related to matters not forming part of the rated property.

The intake of the New River Company at Hertford.—In *New River Co. v. Hertford Union* (u) a difficult question was raised as to the principle of valuation to be applied to the intake by means of which the New River Company diverted water from the River Lea into the New River. Under their special Acts the New River Company made an annual payment of 1,500*l.*, and had paid a capital sum of 42,000*l.* to the conservators of the River Lea, and in consideration of these payments, and other payments made by the East London Waterworks Company, all the water flowing in the River Lea, except so much as was required for

(s) (1813), 1 M. & S. 503.

(t) [1899] 2 Q. B. 14 ; *supra*, p. 177, where the case is more fully considered.

(u) [1902] 2 K. B. 597 ; Ryde and Konstam's Rat. App. (1894—1904) ; reversing the judgment in the King's Bench Division, [1901] 2 K. B. 620.

navigation, was vested in the two water companies, the proportions in which they were to take the water being prescribed by the Acts. The New River Company took their water from the River Lea by means of an opening in the bank through which the water flowed by gravitation into a ditch communicating with the New River, and they were in occupation of this intake, which they had protected by posts in the river and an iron grating. The Court of Appeal held that the point at which the water was to be taken was fixed by the special Acts (*x*). The rateable value of the New River Company's property in the parish was agreed at 650*l.*, if the structural value of the intake as mere land with buildings upon it was to be considered; but the assessment committee had imposed an additional assessment of 3,180*l.* as representing the enhanced value in respect of the user made of the intake by taking water from the River Lea. The sum of 3,180*l.* was arrived at by taking four per cent. on the capital sum of 42,000*l.* paid by the New River Company and adding thereto the annual payment of 1,500*l.*; but the assessment committee admitted that, though these sums might be *primâ facie* evidence, they were not necessarily the measure of rateable value. The Queen's Bench Division struck out the item of 3,180*l.* altogether, holding that the assessment of the intake must be based solely upon the structural value of the buildings and land, and that the right to take water from the Lea through the intake must be left out of consideration altogether. But this decision was reversed by the Court of Appeal, who, however, sent the case back to quarter sessions, holding that although the right to take water must be taken into account, it had been taken into account by the assessment committee on a wrong principle. The principles laid down for the guidance of the sessions may be gathered from the following extracts from the judgment of COLLINS, M.R. (*y*) :

"The New River Company has, by statute, a very valuable right of appropriating water drawn from the River Lea. It is absolutely necessary for them to get access to the River Lea in order to appropriate that water in the given quantities, and the point at which they take it is fixed by statute, and is, presumably, the point best adapted to their needs. The land which they occupy for the purpose of securing and passing the water into their system must have an added value by reason of its special fitness for this purpose. If it were the only spot over which they could carry out the diversion, and thus achieve the enjoyment of the valuable right conferred upon them, they would obviously be prepared to pay a high rent for

(*x*) See [1902] 2 K. B., at p. 608, *per* COLLINS, M.R. On p. 605, *ibid.*, the argument (as reported) contains an admission that the company were "not compelled to take the water at an intake in that particular spot." But the judgment does not apparently take this view of the effect of the special Acts, and the admission was in fact made hypothetically, as a point that did not affect the question at issue.

(*y*) [1902] 2 K. B., at pp. 608, 609, 611.

its use, and a rate which ignored this element of value would be obviously wrong. This is one of the commonplaces of rating law, and it is not necessary to refer to authorities upon it. . . . Suppose a person buys the right to take and carry away all the gold in a given area, and suppose he is obliged to occupy other land in order to reach and carry away the gold—could the price paid for the right to get the gold be any element in measuring the rateable value of the land used and occupied as a means of access? Suppose the gradients were such that the ore could be rolled down by its own weight on a tramway across the land so occupied—the price paid for the right to get the gold could not enter into the rating of the tramway, though the value of the privilege would affect the price which the owner would give for the means of access. . . . I think the standard of structural value is not the true one to apply to such a case [as this]. There is an added element of value in this case by reason of the special fitness of the land and structure for a particular profitable purpose.”

And MATHEW, L.J., said (z):

“The true mode of assessing the property in question is to ascertain whether the land over which the water of the New River Company passes from the River Lea has an enhanced value in respect of the user made by the appellant company. In other words, whether its fitness for the purpose for which it was used would justify any, and what, increase of the rent which a tenant might reasonably be required to pay for the access afforded from the River Lea to the New River. It should be borne in mind that the subject-matter of assessment is like an entrance to a property through a gateway. The land occupied by the gate may be held to be made more valuable by the purpose to which it is put. The court of quarter sessions will be guided by any evidence laid before them, but it would seem that any element of entrance value might be moderate in amount.”

The case accordingly went back to the sessions for re-hearing, subject to the directions given by the Court of Appeal. The assessment committee on the re-hearing left out of account the payments made by the New River Company to the conservators of the Lea, but contended (adopting the language of the MASTER OF THE ROLLS) that “the value of the privilege” enjoyed by the company was more than the assessment of 3,180*l.* which was appealed against; and they gave evidence to show (*inter alia*) that if the company had not had the privilege of getting water from the Lea, the capital cost of sinking the necessary wells and the annual cost of pumping would have been so great that the company would have been willing to pay far more than 3,180*l.* for the privilege of taking water through the intakes. The sessions confirmed the assessment appealed against, without stating the ground of their decision, and refused a case for the High Court.

Remarks on the New River Case.—It is not quite clear that MATHEW, L.J., entirely agreed with the judgment of COLLINS, M.R., although he arrived at the same result—viz., that the case must go back for re-hearing. Possibly MATHEW, L.J., was of opinion that the only additional element to be allowed for in rating the intake was its “special fitness” for taking in water; that is to say, for example, the advantage which one site possessed, as compared with another, for affording access to the New River, because such access was either more direct, or involved less outlay on repairs, pumping, or the like. On this view it must apparently be assumed that the hypothetical tenant possesses the right to take water from the Lea, and that he has merely to decide what rent he will pay for one out of many possible sites for his intake. On this hypothesis, the additional rent that he will pay, beyond the ordinary letting value, will be small. But COLLINS, M.R., seems to assume that the special Acts fixed the position of the intake, and did not allow the company to exercise the right of taking water elsewhere. On this hypothesis, if the hypothetical tenant must either become a tenant of the intake, or go without the water, he would obviously give a considerable rent for the intake.

It may be noticed that the measure of value supplied by the sums in fact paid by the New River Company for the right to obtain water from the Lea, and the measure suggested by the outlay which they would have had to incur by pumping, though not identical, are not altogether independent of each other. In promoting their Bill in Parliament, the company (presumably) considered whether the terms proposed to be put upon them by Parliament were more burdensome than the cost of obtaining water by pumping would be, and adopted the course which best suited their interests.

Whether the profits of a gas company can be taken into account.—Except perhaps in the early case of *Atkins v. Davis* (a), it appears never to have been contended that the profits of a water company ought not to be taken into account, assuming that the water company were rateable at all. But a distinction was at one time drawn between water companies and gas companies, on the ground that water was a natural product of land, while gas was a manufactured article; and it was said that the profits arising from the sale of gas were profits of a trade and were not rateable. Whatever may have been the law before 1836, the question is now determined by the definition of net annual value in s. 1 of the Parochial Assessments Act, 1836 (b), as the rent which may reasonably be expected; if the profits which a gas company can

(a) (1783), Cald. 315.

(b) Set out in Appendix II., *infra*.

make will induce the company to give a higher rent for the works and mains, those profits cannot be left out of consideration in fixing the rateable value (*c*).

In *R. v. Birmingham Gas Co.* (*d*), it was stated in the case that stock-in-trade and the profits of the manufactories in Birmingham were not in practice rated (*e*), and the sessions found that the premises, pipes, etc., of the company, if rated as other lands in the parish—that is to say, if the profits arising from the sale of gas were not included—were worth 200*l.* per annum, but were worth 800*l.* if the profits arising from the sale of gas were included. (It was not stated in the case how the 200*l.* was arrived at; possibly that sum represented a percentage on the cost of construction (*f*).) ABBOTT, C.J., said (*g*) :

“I am of opinion that the amount in respect of which the company are rateable is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the business there. . . . The profits are not in this case rateable. If they were, a blacksmith’s forge might be rated, not at what it would let for, but at the sum which the blacksmith acquires by it. . . . Here the profits rated are those of a manufactory which are obtained by applying the skill and industry of man to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters (*h*), which are natural products arising within the parish, and rendering the land in which they are situate more valuable.”

This decision was given before the passing of the Parochial Assessments Act, 1836, but the first sentence above cited correctly states the principle adopted by the definition of “net annual value” in s. 1 of that Act (*i*), and that sentence is undoubtedly still good law. But the remainder of the judgment seems to suggest that, in estimating rent, the profits of manufacture are in every case to be left out of consideration; but this is not so, and the distinction between the illustration given by ABBOTT, C.J., and the facts of the case before him points this out. The rent of a blacksmith’s forge is not regulated by his profits, because the blacksmith can take his business to another forge, though a forge adjoining a high road much frequented by traffic may well

(*c*) *Vide supra*, pp. 165—168.

(*d*) (1823), 1 B. & C. 506.

(*e*) As to the rateability of stock-in-trade, *vide supra*, pp. 2—4.

(*f*) In *R. v. Brighton Gas Co.* (1826), 5 B. & C. 466, it was held that the company were rateable for the value of the land occupied by their pipes, as increased by the laying down of the pipes; but the court did not decide how that increase in value was to be measured.

(*g*) 1 B. & C., at p. 510.

(*h*) See *R. v. Miller* (1777), 2 Cowp. 619; *supra*, p. 268, note (*p*).

(*i*) Set out in Appendix II., *infra*. The decision in *R. v. Birmingham Gas Co.*, *supra*, that rent is the measure of value, was confirmed by *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73, *infra*, p. 277, note (*b*), which was one of the earliest cases decided under the Parochial Assessments Act, 1836.

command a higher rent (because of the chance of earning casual profits) than a forge hidden from the public view ; so that even in the case of a blacksmith's forge the profits of manufacture earned on the premises do affect the rent. But the Birmingham Gas Company had the right to lay pipes under the public streets, and no other company or person had that right : consequently they had a monopoly, and any tenant of their works and mains could earn a profit which no other person could earn. It could not be said of a blacksmith's forge, as it could be said of the gas company's works and mains, that there, *and there only*, could the manufacture be carried on and the profits earned. Directly it is ascertained that the occupation of a particular hereditament, or class of hereditaments, will enable the tenants to earn profits which they cannot earn elsewhere, then those profits will affect the rent, and consequently the rateable value (*k*) : and it is quite beside the mark to say, as was said by ABBOTT, C.J., in *R. v. Birmingham Gas Co.* (*l*), that "the profits are obtained by applying the skill and industry of man to capital brought from a distance for that purpose."

It may, however, be said that in *R. v. Birmingham Gas Co.*, the finding of the sessions meant that the larger value of 800*l.*, on which the rate was made, represented the whole of the net receipts of the company, without any deduction for tenant's profits. If that is the effect of the finding, there can be no doubt that the judgment reducing the rate was correct ; for no tenant would take premises to carry on a trade thereon if he has to pay the whole of his net receipts to his landlord as rent (*m*).

In *R. v. Sheffield United Gas Co.* (*n*), the respondents (the rating authorities) had ascertained the rateable value of the whole of the company's works, mains, pipes, etc., by deducting from the gross receipts, the working expenses, and a sum for tenant's profits, tenant's rates and taxes, and the average cost of repairs, renewals, and insurance of buildings, stations, plant and mains ; the remainder being put as the rateable value of the whole undertaking. The company contended (in effect) that the buildings and fixed machinery at their stations should be valued as if employed in a first class and lucrative manufactory in Sheffield, and by comparison with the rents given for other premises used for such manufactories ; and that the land belonging to the company and occupied by mains and pipes should be valued by ascer-

(*k*) See *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *supra*, p. 168.

(*l*) (1823), 1 B. & C. 506, at p. 510.

(*m*) See the remarks on *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73, *infra*, p. 277, note (*b*).

(*n*) (1863), 32 L. J. M. C. 169.

taining the rents given for other lands in Sheffield used without buildings; and as to the mains and pipes under the streets, that they should be valued by a similar method "*only allowing an increased rental for the consideration that the company must necessarily obtain the particular locality, and might therefore be forced by the owner of the land to pay an increased rent for it.*" The contentions on behalf of the company were aimed at excluding altogether from consideration the profits made by the company, whereas the valuation made by the respondents were based on those profits. The court held that the method adopted by the respondents was correct as to this point. As no reasons were given for holding that the appellants' method was wrong, the following reasons may be suggested. The contention that gasworks should be valued by comparison with the rents paid for other manufactories not used for or suitable for making gas, is in effect "to rate land occupied in one mode as if it were occupied in another; the modes [probably] producing different rates of profit, and commanding different amounts of rent; than which nothing can be more unreasonable" (*o*). Further, the admission (embodied in the words printed above in *italics*) that the company *might* be forced to pay an "increased rent" for their mains in the streets, exposes the fallacy of the appellants' contention. For in considering how much the "increased rent" is to be, it is obvious that the landlord and tenant would both look at the net profits which the occupier of the mains would be able to earn: in other words, they would make some such calculation as that made by the respondents in arriving at the rateable value. It will be noticed that the effect of *R. v. Sheffield United Gas Co.* (*p*) is to overrule *R. v. Birmingham Gas Co.* (*q*), so far as that case decided (if it did decide) that the profits of a gas company are not to be taken into account in rating the company. And as the decision in *R. v. Sheffield United Gas Co.* has been followed in actual practice for many years, and in numberless cases, it is hardly likely to be now overruled by any court.

General principles for rating gas and water companies.—

It has been shown (*r*) that in rating gas and water companies, the profits which the companies make must be taken into account; it remains to be seen how this is to be done. Let us first deal with gasworks, or waterworks, belonging to a trading company, and leave for future consideration (*s*) the rating of gasworks or waterworks belonging to a municipal corporation or other similar local authority. In order to simplify the problem, let us assume

(*o*) *R. v. Everist* (1847), 10 Q. B. 178, at p. 207; *supra*, p. 159.

(*p*) (1863), 32 L. J. M. C. 169.

(*q*) (1823), 1 B. & C. 506.

(*r*) *Vide supra*, pp. 268, 272.

(*s*) *Vide infra*, p. 291.

that the whole of the system (whether of gasworks or of waterworks) is situated in one parish. Notwithstanding the difficulty attending the hypothesis, we must assume, in order to comply with s. 1 of the Parochial Assessments Act, 1836, that there is a tenant in occupation of the whole, and we have to inquire what rent he may reasonably be expected to give. In considering what rent he could afford to give, the tenant would first inquire what profits can be made out of the undertaking: the first thing, therefore, is to ascertain the gross receipts (*t*), and to deduct therefrom the ordinary working expenses in order to arrive at the net receipts. The definition of "net annual value" in the Parochial Assessments Act, 1836, assumes that the tenant has to pay the usual tenant's rates and taxes, and they must therefore be deducted from the total income of the tenant, before it can be ascertained what rent he can afford to pay (*u*); and where all the works are situated in one parish, the rates and taxes may be conveniently included among the working expenses (*x*). The definition of "gross estimated rental" in s. 15 of the Union Assessment Committee Act, 1862 (*y*), coupled with the definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836 (*z*), makes it necessary to make the deductions for "repairs, insurance, and other expenses, if any, necessary to maintain the hereditament in a state to command the rent" (*a*) at the *last* stage of the calculations, so as to show the gross estimated rental, and net annual value. Consequently all items of expenditure on repairs of the rateable hereditament, and other items, which are deducted at the last stage of the calculation, must be eliminated from the working expenses; otherwise they will be deducted twice. Having deducted the working expenses (including the tenant's rates and taxes) from the gross receipts, we arrive at the net receipts, and inquire how much of those net receipts a tenant will be willing to pay as rent to the landlord. It is plain that no tenant

(*t*) The question, what year's receipts must be taken, is considered *infra*, p. 277. A further difficulty may have to be considered in the case of gas companies, where the net receipts are materially greater, or less, than the sum which may be divided among the shareholders: *vide infra*, p. 279.

(*u*) Compare *R. v. Hull Docks Co.* (1824), 3 B. & C. 516, at pp. 527, 528: *Tyne Improvement Commissioners v. Chirton* (1862), 32 L. J. M. C. 192; and note that the former case was decided before the passing of the Parochial Assessments Act, 1836.

(*x*) As to the method of dealing with the rates, where the works extend into several parishes where different rates in the pound are levied, *vide infra*, p. 289.

(*y*) 25 & 26 Vict. c. 103: see Appendix II., *infra*.

(*z*) See Appendix II., *infra*. The corresponding definitions of "gross value" and "rateable value" in s. 4 of the Valuation (Metropolis) Act, 1869 (set out in Appendix II.), make the point here dealt with still clearer; but the Act last referred to applies only to the "metropolis" as therein defined.

(*a*) These include a sinking fund for renewals: *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73: *Dewsbury and Heckmondwike Waterworks Board v. Penistone Union* (1885), 16 Q. B. D. 585. The decision on this point was not questioned in the Court of Appeal: see 17 Q. B. D. 384.

will undertake to pay a rent equal to the whole of the net receipts; for if he did there would be nothing to induce the tenant to provide the necessary working capital, and to undertake the risk of loss and the liability to pay the rent in any event: something must therefore be deducted for the tenant's profit (*b*). The question how much must be deducted under this head is entirely a question of fact (*c*), to be determined in the first instance by the rating authorities, and (on appeal) by the sessions; and the Queen's Bench will not consider it. The tenant's share of the profits having been deducted from the total net receipts, the remainder represents the gross estimated rental which a tenant may be expected to pay, where the landlord bears "the cost of repairs, insurance, and other expenses (if any) necessary to maintain the hereditaments in a state to command the rent," and, when the cost of those repairs, etc., has been deducted from that rent, we arrive at the net annual (or rateable) value (*d*).

What year's accounts must be made the basis of calculation.

—The first question which may arise is, on what year's accounts are the calculations of rateable value to be based? Different considerations affect the question, according as the appeal relates to property within, or outside, the "metropolis" as defined by the Valuation (Metropolis) Act, 1869 (*e*). Outside the metropolis, a company complaining of over assessment, may appeal against each separate rate after it is made, and therefore after the valuation list on which the rate is based has come into force (*f*). But within the metropolis, an appeal on the ground of over assessment must be an appeal, not against a rate made after the valuation list comes into force, but against the valuation list before it comes into

(*b*) A decision, which is at first sight to the contrary effect, will be found in *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73, at p. 87. But there the sessions had found what was the rent which a tenant would give, and from that rent there could of course be no deduction for tenant's profits, the deduction (presumably) having been already made. The judgment of Lord DENMAN, C.J. (*ibid.*, p. 87), really supports the view stated in the text; or, if it does not, it must be taken to be overruled by a long series of cases, of which it is sufficient to cite *R. v. Sheffield Gas Co.* (1863), 32 L. J. M. C. 169; *R. v. Mile End, Old Town* (1847), 10 Q. B. 208; *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587; *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18.

(*c*) *Per* BLACKBURN, J.: *R. v. Sheffield Gas. Co.* (1863), 32 L. J. M. C. 169, at p. 173. A few remarks as to the amount of the deduction will be found *infra*, pp. 279—281.

(*d*) See the definitions of "net annual value" in s. 1 of the Parochial Assessments Act, 1836, and of "rateable value" in s. 4 of the Valuation (Metropolis) Act, 1869. Both of the Acts are set out in Appendix II. Examples of valuations of gasworks will be found in *South Metropolitan Gas Co. v. St. Olave's*, Ryde's Met. Rat. App. 305; *Gas Light and Coke Co. v. City of London Union*, Ryde's Rat. App. (1891—1893) 204; and *R. v. Lee* (1866), L. R. 1 Q. B. 241.

(*e*) Set out in Appendix II. The definition of the "metropolis" is to be gathered from ss. 3, 4: see also p. 513, *infra*.

(*f*) See Poor Relief Act, 1843 (17 Geo. 2, c. 38), s. 4, and the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), ss. 21, 22, 28. Both Acts are set out in Appendix II.

force, and the list as altered on appeal becomes conclusive evidence of value for five years, or until the making of the next quinquennial re-valuation, subject, however, to alteration in certain cases by means of supplemental or provisional lists (*g*). So that, outside the metropolis, a fresh appeal may be entered against each rate as it is made, and a new valuation list may be made at any time, while within the metropolis an appeal on the ground of over assessment can be made (speaking generally) only once in five years (*h*), and the valuation list (as confirmed or altered on appeal) remains in force for five years from a date subsequent to the hearing of the appeal. It has been decided (*i*) that, on an appeal against a rate outside the metropolis, "the sessions ought to avail themselves of every light that can be afforded them down to the latest period antecedent to the actual making of the rate, in order to bring it to the greatest possible accuracy. The overseers, in making a prospective rate, are to make it on the supposed prospective value ascertained by them, as well as they can, from the latest evidence in their power as to antecedent value." The rule here laid down shows that in an appeal by a gas or water company, the last published accounts before the making of the rate (or, in the metropolis, the making of the list) appealed against may be looked at as evidence of rateable value. But the rule still leaves the question open whether evidence can be given of accounts published before the hearing of the appeal but after the making of the rate (or, in the metropolis, of the list) which is appealed against. The question is not necessarily of so much importance in an appeal against a rate outside the metropolis, since the next succeeding rate may be appealed against, and no injustice will be done if the receipts of one year are made to govern the rateable value in the next (*k*). But in an appeal against a valuation list in the metropolis the question is of more importance owing to the duration of the list. The fact that the list does not come into force until *after* the time fixed for hearing appeals has expired (*l*) furnishes an additional reason for taking the accounts for as late a period as possible. The latest decision of the London quarter sessions on the point (*m*) is that the parties may give in evidence the accounts for the last period before the hearing of the objection by the assessment committee. It had been previously decided that accounts for a period

(*g*) See the Valuation (Metropolis) Act, 1869, ss. 43, 45, 46.

(*h*) In circumstances which must be regarded as more or less exceptional, a supplemental list may be made: see Chapter XXXIII., *infra*.

(*i*) *R. v. London, Brighton and South Coast Rail. Co.* (1851), 15 Q. B. 313, at pp. 367, 368.

(*k*) *Vide per* BLACKBURN, J.: *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515.

(*l*) See s. 42 of the Valuation (Metropolis) Act, 1869, in Appendix II.

(*m*) *South Metropolitan Gas Co. v. Greenwich Union* (1897), Ryde and Konstam's Rat. Ap. (1894—1904), 21.

ending after the decision of the assessment committee and before the hearing of the appeal, could not be given in evidence (*n*) except by consent (*o*). In other cases (*p*) which have been decided on the same point the question was complicated by special circumstances.

Limitation of dividends of a gas company.—In the case of a gas company where the profits divisible among the shareholders are limited according to the price at which gas has been sold, a very difficult question arises where the profits earned exceed the profits divisible, and part of those profits is therefore carried forward to the next half year's account: ought the profits actually earned, or the profits available for dividends, to be made the basis of calculation? It may be said, on the one hand, that to rate the occupier in respect of profits which he cannot appropriate is unjust; and, on the other hand, that it is wrong to ignore the surplus profits which (though not divisible), at all events, render the divisible profits more secure. In the converse case, where the profits earned are less than the dividends, which are in part paid out of a reserve fund, the question arises whether the rateable value in each year must not be based on the profits earned in that year, and not on the accumulation of past years (*q*).

Tenant's capital.—It has been shown that a deduction must be made for tenant's profits (*r*), and that the amount of the deduction is entirely a question of fact (*s*). In practice, the most common method of calculation is to ascertain the necessary tenant's capital, and to take some percentage thereon. Where this method is adopted, the hypothetical tenant must be supposed to provide all the necessary stock-in-trade, coals, tools, chattels, and loose machinery necessary for carrying on the business. These include (in the case of a gas company) the meters placed on their customers' premises, but not the retorts, purifiers, steam engines (used for driving machinery and fixed by screw bolts), boilers, or gasholders (*t*), all of which are valued as enhancing the value

(*n*) *South Metropolitan Gas Co. v. Greenwich Union*, Ryde's Rat. App. (1891—1893), 56.

(*o*) *Royal Agricultural Hall Co. v. Islington*, *ibid.*, p. 125.

(*p*) *Gas Light and Coke Co. v. City of London Union*, *ibid.*, p. 204, at p. 206; see also p. 159; *London Hydraulic Power Co. v. City of London Union*, *ibid.*, p. 138; see p. 144; *London and India Docks Co. v. Stepney Union*, *ibid.*, p. 153; *London Street Tramways Co. v. Islington*, Ryde's Rat. App. (1886—1890), 147; *South Metropolitan Gas Co. v. St. Olave's* (1881), Ryde's Met. Rat. App. 305.

(*q*) The question was argued, but not decided, in *Gas Light and Coke Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 204; see pp. 217, 220, 222.

(*r*) *Vide supra*, p. 277.

(*s*) *Per* BLACKBURN, J.: *R. v. Sheffield Gas Co.* (1863), 32 L. J. M. C. 169, at p. 173.

(*t*) *R. v. Lee* (1866), L. R. 1 Q. B. 241.

of the freehold (*u*). The present actual value, and not the prime cost of all tools, machinery, etc., provided by the tenant must be taken as the basis of calculation (*x*). The hypothetical tenant must also provide sufficient capital to carry on the business until he receives enough money from that business to meet the current working expenses, including (*inter alia*) the rates. It is sometimes suggested that the hypothetical tenant must be provided with sufficient capital to be able to pay his rent punctually every quarter day. To this it has been answered that the definitions of "net annual (or rateable) value" do not require that the rent should be payable quarterly, and that, in the absence of any such requirement, a yearly rent cannot be demanded quarterly, or before the end of the year (*y*); and further that if a tenant were to claim a deduction from the gross receipts equal to seventeen and a half per cent. on the capital required for punctual quarterly payments of rent, the landlord would allow the payments to be made at later periods rather than submit to so large a deduction. In considering for how long a period working expenses must be provided, it must be assumed that the hypothetical tenant on going into possession would not be entitled to receive the outstanding debts due to his predecessor. In the case of a water company, it must be considered whether the company have, and exercise, the power to charge water rates in advance. In the case of a gas company, it must be remembered that, while the bulk of the income from the sale of gas by meter is not even ascertained until after the expiration of three months' supply, and not even then received immediately, yet where the company have adopted the use of automatic meters (vulgarly called "penny-in-the-slot meters"), the receipts from such meters may amount to a substantial sum, and as they come in may *pro tanto* reduce the capital which the hypothetical tenant must have in hand on starting his business. So, too, the sale of coke and other residual products, if made for cash or for short credit, may help to provide working capital. In practice, in rating a gas company, it is usual to take about four and a half or five months' working expenses; but the question, of course, depends upon all the circumstances affecting the company's receipts.

(*u*) Difficult questions sometimes arise as to machines, which are partly of the character of fixed cranes, and partly of the character of locomotive engines, in that they run on rails, though for a very short distance: as to such machinery, see *Tyne Boiler Works Co. v. Loughbenton* (1886), 18 Q. B. D. 81; *Ryde's Rat. App.* (1886—1890), 241; *London and India Docks v. Poplar Union* (1900), *Ryde and Konstam's Rat. App.* (1894—1904), *infra*, pp. 485, 487; and the other cases collected in Chapter XXV.

(*x*) *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68; 3 E. & E. 392; *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179.

(*y*) *Coomber v. Howard* (1845), 1 C. B. 440; *Collett v. Curling* (1847), 10 Q. B. 785; *Turner v. Allday* (1836), Tyr. & Gr. 819; see Woodfall's *Landlord and Tenant*, 16th Edition, p. 423.

After ascertaining the full amount of "tenant's capital," which must be provided either for working capital or for tools, stock, etc., there remains the question—what rate of interest must be applied to that capital as representing the tenant's share of the profits? Perhaps, as a rule of thumb, the commonest practice at the London quarter sessions is to take five per cent. for interest, ten per cent. for trade profits, and two and a half per cent. for risks and casualties (*z*); but the rule must be regarded as subject to reconsideration (*a*), and is not universally adopted.

It must further be noticed that the method of deducting some percentage on the tenant's capital is merely a means to an end, and that the real question to be answered is, what allowance for tenant's profits would be sufficient to induce the hypothetical tenant to take the hereditament at the supposed rent? It may be that if the necessary tenant's capital be 100,000*l.*, the prospect of making seventeen and a half per cent. would be sufficient inducement to the tenant to pay a given rent; but it does not follow that if the necessary tenant's capital is only 100*l.*, the prospect of making seventeen and a half per cent. thereon out of the same net receipts would be sufficient inducement to the tenant to become liable to pay the much larger rent which this method of calculation would show. In fact, this method of calculation is not appropriate in extreme cases: for example, on the letting of a toll-bridge, the tenant's capital required would be a merely nominal amount. In extreme cases, it is not uncommon to take some arbitrary percentage of the gross receipts as representing the tenant's share.

Apportionment of rateable value among several parishes.

—Where the system of a gas or water company extends into several parishes the practice now universally adopted is to ascertain first the rateable value of the whole system (*b*) in the manner indicated above (*c*), and then to apportion that rateable value among the several parishes into which the system extends (*d*). The principle of apportionment is based on the distinction between the two kinds of property into which (by a rough division) every

(*z*) *Midland Rail. Co. v. Islington*, Ryde's Rat. App. (1886—1890), 139; *London Hydraulic Power Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 138, at pp. 140, 141, 143; *Gas Light and Coke Co. v. City of London Union*, *ibid.*, p. 204, at pp. 207, 209, 212, 215, 217; *London and North Western Rail. Co. v. Hampstead* (1897), Ryde and Konstam's Rat. App. (1894—1904), 14: see p. 259, *supra*, where other cases relating to railways are cited.

(*a*) Ryde's Rat. App. (1891—1893), 214.

(*b*) The practice in rating railways is quite different: *vide supra*, pp. 192, 193.

(*c*) *Vide supra*, pp. 275—277.

(*d*) In this paragraph the writer is dealing only with gas and water works belonging to trading companies. The question of apportionment where the gas or water works are in the hands of a municipal corporation, or other similar local authority, is considered *infra*, p. 306.

system of gasworks or waterworks may be divided, viz. : (1) the pipes which deliver gas or water to the consumers, and are thus directly productive of profit ; and (2) the stations where the gas is manufactured or water pumped up, and where gas or water is stored, and the carrying mains which convey the gas or water from one station to another, or from the stations to the parishes in which the gas or water is sold ; the stations and carrying mains being in themselves unproductive, but indirectly productive of the profits earned by the other parts of the system (*e*). The distinction is but a rough one, and is not very scientific, for very often purely arbitrary distinctions are drawn to distinguish unproductive from productive mains (*f*). In one sense, every pipe that supplies more than one consumer is both directly and indirectly productive of profit : directly productive, because it delivers gas or water for which the customer pays ; indirectly productive, because it conveys gas or water past the first customer's premises for delivery to other customers, who may live in another parish. But the distinction, though admittedly rough and unscientific, is now invariably adopted.

The leading cases on the question of apportionment are *R. v. Mile End, Old Town* (*g*) and *R. v. West Middlesex Waterworks* (*h*), and they have sanctioned the following method : The rateable value of the whole system being ascertained, the rateable value of the indirectly productive part is subtracted therefrom, and the residue is divided among the several parishes into which the directly productive part extends, in proportion to the gross or net receipts earned in those parishes.

The Mile End Case.—In *R. v. Mile End, Old Town* (*i*), the rateable value of the whole system had been ascertained, and the decision related only to the question of apportionment. The special case found that “in several of the parishes the water rates are very trifling ; but the company possess therein extensive permanent works, such as buildings, reservoirs, conduits, canals, bridges, and mains, yielding to the company no other profit than as being conducive to the earnings of water rates in other parishes. The annual value of these may be assumed to be 6,500*l.*, as mere land and buildings, with their fixtures and machinery attached, and deriving some additional value from their capacity of being applied

(*e*) See *R. v. Mile End, Old Town* (1847), 10 Q. B. 208, at p. 219.

(*f*) See *Gas Light and Coke Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 204, at p. 216.

(*g*) (1847), 10 Q. B. 208.

(*h*) (1859), 1 E. & E. 716, *infra*, p. 283.

(*i*) (1847), 10 Q. B. 208.

to such purposes as that of a water company" (*k*). Lord DENMAN, C.J., said (*l*) :

"The company contend that the division [of the total rateable value] should be according to the amount of fixed capital in each district. But the rule of law, laid down by Act of Parliament, for ascertaining the rateable value of any subject, refers to an estimate of the rent it should yield. The outlay of capital might furnish no such criterion; since it may have been injudiciously expended, and what was costly may have become worthless by subsequent changes. [After approving the division of the whole system into the directly and indirectly portions above explained (*m*), and the deduction of the value of the latter from the whole, the judgment proceeded as follows.] The remaining step has been to apportion the residue of the rateable value among the districts in which the direct productive portion of the works is situate, in the ratio either of the net profits, or of the gross receipts, or of the quantity of mains and pipes, and of the land occupied by them in each district. Each ratio in the present case gives the same result: if they differed, it would be necessary to select between them; and that ratio should be preferred which would best show the rent to be expected if the part of the works situate in the district was let separate. It is clear that the net profits in each parish would be the best criterion of such rent; and they would, therefore, give the proper ratio. It is also clear that the ratio of the gross receipts or earnings in the several districts to each other will be the same as the ratio of the net profits in those districts to each other, in all cases where the total of expense is taken to be common to the whole apparatus, and is deducted from the total of receipts in the progress of ascertaining a rateable value."

The decision in *R. v. Mile End, Old Town*, stated above, overrules the decision in *R. v. Cambridge Gas Co.* (*n*), that the rateable value of the directly productive portion of the system should be divided "in proportion to the quantity of apparatus situate in each parish" (*o*).

The West Middlesex Waterworks Case.—The decision in *R. v. Mile End, Old Town* (*p*), was approved in *R. v. West Middlesex Waterworks* (*q*), as will be seen from the following extract from the judgment of WIGHTMAN, J.:

" . . . It is clear that each parish must rate the part which lies within it: such part becomes a separate rateable subject in that parish, and must be rated according to the Parochial Assessments Act, upon an estimate of the rent which that part would yield after proper deductions. In practice,

(*k*) This finding leaves undetermined the question how much "additional value" is to be attributed to "mere land and buildings" which are used by a water company: this question is considered *infra*, pp. 284, 285. See also *New River Co. v. Hertford Union*, [1902] 2 K. B. 597; *supra*, p. 269, and the remarks thereon, *supra*, p. 272.

(*l*) 10 Q. B., at p. 218.

(*m*) *Vide supra*, p. 282.

(*n*) (1838), 8 A. & E. 73.

(*o*) A division on this basis was treated as absurd in *R. v. West Middlesex Waterworks* (1859), 1 E. & E. 716, at p. 725; *infra*, p. 285.

(*p*) (1847), 10 Q. B. 208.

(*q*) (1859), 1 E. & E. 716.

a tenant of the parochial portion of a canal, railway, gasworks, waterworks, or the like, has rarely, if ever, been known. But an hypothetical tenant must be assumed . . . Although each parish rates separately upon its own estimate of the value of the part lying within it, and the law gives no power of making all the parishes co-operate in rating the several parts lying in each, nevertheless, this court is bound to protect the occupier of such an apparatus from being rated beyond the rateable value of the whole taken together; and it is in reference to this protection that the court must take into its consideration at once all the separate rates, as so many claims upon one given fund, and must apportion that fund, bearing in mind that every addition to the rateable value assigned to one parish must be a subtraction from the rateable value which might be given to some other parish. Supposing, then, the apparatus to be apportioned to several tenants according to the parts in several parishes: the tenants of the parts directly earning net profits in a parish would be rated by that parish for all profits earned therein, this being the parochial principle of apportionment which has been unanimously upheld hitherto in respect of all canals, railways, water companies, gas companies, and bridges. But the tenants of the parts directly earning no profit would not be liable to be rated in respect of any rent, in the ordinary sense, which is profit remaining after all deductions have been taken from the receipts (*r*). But as these parts of the apparatus directly earning nothing, but indirectly conducing to such earnings elsewhere, are assumed to continue in operation, the company, to whose interest such continued operation is essential, must be assumed to pay adequate remuneration to a contractor for land and fixed capital invested therein, together with the labour and skill requisite for the effective continuance of such operation; and this contractor with the company would stand in the relation of occupying tenant to the parish, and the part within the parish would be the rateable subject, and the local rateable value would be such sum as would pay the rent of the land and the profit on fixed capital therein (*s*).

“It is said in the *Mile End Case* (*t*), that the parts indirectly conducing to produce profit are to be rated as mere land, etc., with some additional value from their capacity of being applied to such purposes as those of a water company. The meaning of these words would be exemplified in this case, if it be supposed that the bank of the Thames and the underground of the highways in Hampton, were heretofore of no rateable value, but that, when a wharf on the bank was required to raise water from the Thames, and when the underground of the highways was required for the laying mains giving transit to such water, the owners of the soil of the bank, and of the highway could get some payment for allowing the use of their soil. Thus land which before produced nothing would produce something, and so have some rateable value; which would be an addition arising solely from its capacity for being used for a water company. Value is derived entirely from the relation of demand to supply; and, if a water company comes into competition with a mere agriculturist for land for waterworks, an addition is made to the value of such land by the additional competition. This principle might raise land worth nothing into being worth something, as

(*r*) This can hardly have been intended as a definition of rent. For “rent in the ordinary sense” is given for a dwelling-house from which no profit is made.

(*s*) See the remarks on this passage, *infra*, p. 286.

(*t*) (1847), 10 Q. B. 208; *supra*, p. 282.

above supposed, and land worth something in higher value in the case of a site for a steam engine, with yard and shed and cottages attached, or of a site for a reservoir or filtering bed, and the like. Upon the common principles regulating value, it is enhanced in proportion to the scarcity of the thing in demand : so that, if a few levels only were suitable for the required transit, or a few sources of water alone were accessible, the price would be higher. In this sense, the words cited above from the *Mile End Case* (*u*) are applied to the mains in Hampton in their ordinary meaning, and in the meaning in which they are applied to stations, warehouses, yards, workshops, and the other premises appertaining to railways and canals rated on the principle of indirectly conducing to the direct earnings of railways and canals. On this principle the company contended that the rateable value of the part of the apparatus in the parish of Hampton is to be ascertained ; and we are of opinion that the company is right.

“ The parish contended for a higher rateable value ; and it remains to consider on what ground. It was argued for the parish that every part of the apparatus was equally essential for the delivery of water from Hampton to the consumers in other parishes ; and that, therefore, the rate should be on the quantity of apparatus in Hampton. The answer is twofold. In the first place, all the apparatus is not equally essential. The subject of purchase by the consumer is water delivered at the required place : it matters not to him whether the water has passed from the east or the west, or been raised on the spot from a well. Transit of water is not the subject of demand, as in the case of goods or passengers to be conveyed by railways and canals ; but the water itself brought to the service pipe of the consumer, the junction of such pipe with the main being the source of profit. Such delivery is the one indispensable requisite for purchase ; whereas the course of transit might be varied in manifold directions, according to convenience, without affecting the value of the water to the purchaser. In the next place, no definite meaning was, or, as it appeared to us, could be given to ‘ quantity of apparatus ’ for apportionment of rateable value (*x*). Quantity must be ascertained by some measure, lineal, superficial, or solid : and, if any of these measures were applied to steam engines, reservoirs, filtering beds, cottages, mains and the like, and the rate upon the sum total of earnings appropriated accordingly, the sum total would be disposed of upon a principle not more rational than a lottery.”

The decisions in *R. v. Mile End, Old Town*, and *R. v. West Middlesex Waterworks*, were reviewed and confirmed in *Chelsea Waterworks Co. v. Putney* (*y*), and in *R. v. Sheffield Gas Co.* (*z*).

Observations on the West Middlesex Waterworks Case.—The rules laid down in *R. v. West Middlesex Waterworks* (*a*) have been acted upon in a large number of cases, extending over many years. There is, however, one exception, viz., *Dewsbury and*

(*u*) (1847), 10 Q. B. 208.

(*x*) A similar measure had in fact been applied to pipes and mains in *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73 ; *supra*, p. 283.

(*y*) (1860), 29 L. J. M. C. 236.

(*z*) (1863), 32 L. J. M. C. 169. This decision directly negatives *R. v. Cambridge Gas Co.* (1838), 8 A. & E. 73, on the question of apportionment.

(*a*) (1859), 1 E. & E. 716.

Heckmondwike Waterworks Board v. Penistone Union (b), in which the Queen's Bench Division, in dealing with the assessment of reservoirs and pipes from which no direct profit was derived, said :

"We are clearly of opinion that what may happen to be the adequate remuneration to a contractor for executing the appellants' works, is not the true measure of the net rateable value of their premises. This is not the test applied by the Parochial Assessments Act, nor is it a test which has ever to our knowledge been recognised in a court of law ; and, what is more, it is obviously so unreliable and fallacious, that in our judgment no reliance whatever can be placed upon it."

It may safely be said that this decision, if intended to overrule the *West Middlesex Waterworks Case*, has been absolutely ignored in practice. It is also remarkable that on the same day on which the decision above quoted was given, two other judges of the Queen's Bench Division decided *R. v. School Board for London* (c), in which CAVE, J., said that interest on cost "is a rough test undoubtedly ; it is a test in some cases, but it is not a test in others" : and that "the reasonable expectation of a contractor" was "a rough test and some *primâ facie* evidence capable, no doubt, of being cut down by some evidence on the other side, but not altogether to be put out of sight."

There is a slight difference between what is commonly known as "the contractor's test" and the test suggested in *R. v. West Middlesex Waterworks* (d). In that case, WIGHTMAN, J., seems to assume a contractor who would occupy the indirectly productive works for the benefit of the company : whereas "the contractor's test," as commonly understood, makes the hypothesis of a contractor constructing the works which are occupied by the company, who pay him a rent. It does not, however, appear that the two forms of the hypothesis, though different, would lead to substantially different results.

Works in excess of existing requirements.—In *R. v. South Staffordshire Waterworks* (e), the general principles laid down in *R. v. Mile End, Old Town* (f), and *R. v. West Middlesex Waterworks* (g), were accepted, but a difficulty arose as to their application in detail. The indirectly productive works were largely in excess of the then existing requirements of the company, and had been

(b) (1885), 16 Q. B. D. 585, at p. 596 ; the point for which the case is here cited was not raised in the Court of Appeal : see 17 Q. B. D. 384.

(c) (1885), 55 L. J. M. C. 33 : *vide supra*, p. 176.

(d) (1859), 1 E. & E. 716, at p. 723 : *vide supra*, p. 284.

(e) (1885), 16 Q. B. D. 359.

(f) (1847), 10 Q. B. 208 : *vide supra*, p. 282.

(g) (1859), 1 E. & E. 716 : *vide supra*, p. 283.

constructed for increased supply in future years. The rateable value of the whole system was agreed, the point in dispute being the proper amount of the deduction to be made therefrom, to arrive at the rateable value of the directly productive works. It was found that if a deduction were made representing three and a quarter per cent. on the capital value of *the whole* of the indirectly productive works, the rateable value of the productive works (the subject of the appeal) must be reduced. If, however, a deduction were made only "for so much of the permanent works as was required for the purposes of the present supply, after allowing a proper margin for contingencies," the rate on the productive works ought to be confirmed (*h*). A further point arose upon the finding that the rate on the productive works ought to be confirmed, if from the rateable value of the whole a deduction were made "only of the amount at which the works indirectly conducing to the earning of profits were actually rated" (*i*), the actual assessments in the several valuation lists being below the true rateable value. The Queen's Bench Division held upon the first point that the excessive expenditure (to meet future requirements) could neither be altogether discarded nor altogether taken into account; and MATHEW, J., said: "It has to be borne in mind in dealing with the question of the rent a tenant would pay, how much profit he could earn immediately, and also how much profit he ought to make in the future. . . . There is abundant authority for showing that while dealing with a tenant from year to year, according to the hypothesis suggested by the Parochial Assessments Act, you may take into account a tenant likely to continue in occupation for years to come" (*k*). The Queen's Bench accordingly held that the rate could not be supported; but the Court of Appeal came to the same conclusion on somewhat different grounds. Lord ESHER, M.R., said (*l*):

"There might be works of the undertaking which had not become part of the actual system, as, for instance, a reservoir or a second lot of engines not yet used at all, but constructed with the view of becoming part of the works in the future. Such would be no part of the existing system of works, but would be intended for another system, and would, of course, be rejected in making the calculation. But that is not this case, for here every part of the works is in actual use, though they are too large for the supply of water

(*h*) Cf. *Mayor, etc., of Liverpool v. Llanfyllin Union* (1898), 78 L. T. 835; (1899). 80 L. T. 667; *infra*, p. 288.

(*i*) In the judgments in the Court of Appeal this question was narrowed, so as to make it equivalent to the question whether from the receipts of the whole undertaking there should be deducted the rates on the true rateable value, or on the actual assessment, of the indirectly productive works. But the principle laid down by the Court of Appeal extends both to the deduction for rates, and to the deduction of the rateable value of the indirectly productive works; the one deduction being inseparably connected with the other.

(*k*) But see note (*n*), *supra*, p. 162.

(*l*) See 16 Q. B. D., at p. 369.

at present required. Therefore, in answer to the first question raised by this special case, viz., whether in calculating the value of the works in this parish, allowance is to be made for all the works of the undertaking now in use, or only for such of them as are required for the present supply. I say that all the works which are now in use are to be taken into the account, and not such only of the works as are necessary for the present supply. . . . As the works in use are in excess of the present requirement, a tenant taking the whole or part of the property in a particular parish, ought not in justice to be asked to pay the same rate of rent as he would if all the works were earning profit. Therefore, if the three and a quarter per cent. mentioned by the arbitrator is the ordinary percentage upon the value of the capital laid out, one would think that the percentage in this case should be reduced to three per cent. or less; but it may be that the proper abatement has been made in fixing the percentage at three and a quarter, and as no question is asked as to such being, or not, the proper percentage, the court has no right to give any opinion thereon.

"Then, as to the second point (*m*). . . . A tenant from year to year is not a tenant for one, two, three, or four years, but he is to be considered as a tenant capable of enjoying the property for an indefinite time, having a tenancy which it is expected will continue for more than a year, but which is liable to be put an end to by notice (*n*). Therefore, with regard to the rates, in order to see what part of the whole property ought to be taken as within a particular parish, you get at the annual value of the whole, as a whole, in order to get the first figure, and then you make certain deductions in order to get at the rateable value of the whole. One of these deductions is the rates (*o*) that the hypothetical tenant would have to pay. This is as imaginary as all the rest, and such tenant is not bound by the valuation list which binds existing tenants if they have not appealed, otherwise the rateable value would vary according as the calculation was made in the first or last of the five years of such list (*p*). The hypothetical tenant is in fact not bound by the valuation list, though probably it would be looked to, and its figures adopted. Therefore, in answer to the second question, which is, whether a deduction is to be made in respect only of the actual rates payable, I say no, but the deduction is to be of the rates which would, as far as can be seen, be payable in respect of the work."

The case above quoted was confirmed in *Mayor, etc., of Liverpool v. Llanfyllin Union* (*q*), which related to the Vyrnwy reservoir. At the date of the rate the reservoir was completely constructed, and was capable of supplying more water than was or could be actually used. The Court of Appeal apparently were of opinion that it was perfectly legitimate to make an allowance for the excess of expenditure beyond existing requirements, either by writing something off the capital outlay (as was done by both parties to the appeal) or by reducing the rate of interest to a low

(*m*) *Vide supra*, p. 287.

(*n*) But see note (*u*), *supra*, p. 162.

(*o*) See note (*i*), *supra*, p. 287.

(*p*) The court appear to have been misled by an erroneous assumption made in argument that the quinquennial system of re-valuation, introduced by the Valuation (Metropolis) Act, 1869, extended beyond the metropolis.

(*q*) (1898), 78 L. T. 835; (1899), 80 L. T. 667. The point here referred to is omitted in the Law Reports: see [1899] 2 Q. B. 14.

figure (as was done in *R. v. South Staffordshire Waterworks*) ; but they held that the question of the amount of allowance to be made was a question of fact for the sessions.

Deduction for rates and taxes.—In rating a system of gas-works or waterworks extending into several parishes, where the “tenant’s rates and taxes” amount to different rates in the pound, if a sum equal to the average rates in the several parishes is subtracted from the value of the whole system, absolute accuracy is not attained in dividing the rateable value of the directly productive portion among the several parishes : for in the parish where the rates are below the average, more than the rates actually levied in that parish will be deducted, and *vice versâ*. To prevent this inaccuracy, it is sometimes the practice not to make any deduction for rates and taxes from the value of the whole, but to bring out a result showing “rateable value plus rates” for the whole and for each parish, and subsequently to make a separate deduction in each parish. Or if the calculation has been already made showing a subtraction of the average rates from the whole, and a clear rateable value (after deduction of rates) for the whole and for each parish, the inaccuracy may be corrected by adding to the rateable value in each parish the average amount of rates, and subtracting from the sum thus arrived at the particular amount appropriate to each parish (*r*). Whatever principle is adopted, the rates on the whole undertaking must be deducted at some stage of the calculation, *including the rates on the indirectly productive portion of the works* when that is deducted from the rateable value of the whole.

Rateability of gas and waterworks held for public purposes.

—It was at one time held that if a municipal corporation (*s*), or other similar public body, occupied land, and the whole of the profits of the occupation were by statute devoted to “public purposes,” the corporation (or other public body) had no beneficial occupation and were not rateable. Although this doctrine has now been swept away by the decision of the House of Lords in *Jones v. Mersey Docks* (*t*), it may be as well to notice the cases decided with reference to the rateability of gas and waterworks belonging to municipal corporations, because they throw some light on the still unsettled question how the rateable value of such properties (assuming them to be rateable) is to be measured.

(*r*) See also *R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359, *supra*, pp. 286—288.

(*s*) The legislation dealing specially with the rating of municipal corporations (as distinguished from other public bodies) is considered *supra*, p. 124.

(*t*) (1865), 11 H. L. Cas. 443, *supra*, p. 133.

In *R. v. Commissioners for Lighting Beverley* (*u*), the commissioners were held not rateable for their gasworks situated within the town of Beverley, because all the profits were devoted to the purposes of the local Acts, relating to the town, under which the commissioners were created. But in *R. v. Longwood* (*x*), the commissioners of Huddersfield were held rateable for their reservoirs situate outside Huddersfield in the township of Longwood; and it was held that the main purpose of the local Acts was the supply of water to such of the inhabitants of Huddersfield as chose to pay for it, and the prevention of fire, "the benefit of which was confined principally to the owners of combustible property therein," and that these were not public purposes creating an exemption (*y*). It is obvious, however, that the case could hardly be supported on such fine distinctions, and that the real ground of the decision is to be found in the following words of Lord DENMAN, C.J. :

"As far as respects the rights of other townships, this portion of the inhabitants, by their commissioners, stand in the position of an ordinary water company, and have no greater right to exempt from rateability a portion of land in Longwood, and so to obtain water at a less cost, than such a company would have had" (*z*).

The absurdity of contending that a municipal corporation was not rateable for its works was well illustrated in *Mayor, etc., of Liverpool v. Overseers of West Derby* (*a*). There the corporation had purchased waterworks belonging to two private companies and extending through several parishes, and by their local Act were bound to reduce the rates charged so as to raise no more than might be necessary to meet the expenditure on the water account. It was held, that though the corporation as such took no benefit, yet it occupied as trustee for the beneficial interest of others, and that such an occupation was rateable.

It may be noticed that it had been already decided (*b*) that reservoirs belonging to a water company, and yielding no profit in the parish in which they lay, were to be rated: and if such property, on being purchased by a corporation, ceased to have a rateable value, although used in precisely the same way as by the water company, a great anomaly resulted, and considerable injustice was done.

(*u*) (1837), 6 A. & E. 645: *vide supra*, p. 130.

(*x*) (1849), 13 Q. B. 116. There was a subsequent case in the same parish, dealing not with the question of rateability, but with the question of amount: *vide infra*, p. 292.

(*y*) *Cf. R. v. Badcock* (1845), 6 Q. B. 787, at p. 800. *supra*, p. 132: to the cases there cited may be added *Mayor, etc., of Manchester v. Overseers of Manchester* (1852), 17 Q. B. 859.

(*z*) This decision was followed in *R. v. Kentmere* (1851), 17 Q. B. 551.

(*a*) (1856), 6 E. & B. 704.

(*b*) See *R. v. Mile End, Old Town* (1847), 10 Q. B. 208; 16 L. J. M. C. 184.

The measure of the value of waterworks belonging to local authorities.—As municipal corporations (and similar bodies) owning waterworks frequently charge (and are bound by statute to charge) lower sums for the supply of water than an ordinary trading company, who supply water solely in order to make profit, the question arises whether, in rating a local authority, the calculations are to be based upon the charges actually made and the profits in fact received, or upon the charges and profits which might be made if the waterworks were in the hands of a trading company.

A distinction between two cases must be noticed. A local authority may make lower charges than a company, either voluntarily or under the compulsion of a statute. In the former case it may be said that the local authority do not diminish the value of their property, and that they can no more claim a reduction of their assessment than the occupier of a house can claim such a reduction on the ground that he does not make full use of all the rooms (*e*). But where the charges which the local authority can make are limited by statute, it is said that this is a restriction attaching to the property, and that the hypothetical tenant must take it subject to such restrictions.

In *R. v. Kentmere* (*d*), commissioners under a local Act made a reservoir by impounding the waters of a stream for the purpose of regulating the supply of water to mills, and were entitled to charge a rate on the occupiers of such mills, the proceeds of the rate being appropriated to maintenance, formation of a reserve fund for contingencies, and payment of principal and interest of money borrowed (*e*). It was found by the sessions that the rateable value of the reservoir appealed against (*viz.*, 377*l.*) would be fair if the works were in the hands of a private person who could refuse the mill-owners the benefit of the increased supply and could make a charge; and the court upheld the assessment as being in accordance with the Parochial Assessments Act, 1836. One part of the judgment may be set out here as forming a useful comment on a later case (*f*). Lord CAMPBELL, C.J., said (*g*):

“The appellants chiefly relied on the objection that, if this rate were confirmed the mill-owners would be doubly assessed: but the objection would hold equally if the undertaking had been carried on by a water company; for the assessment in *Kentmere* would necessarily enhance the price to be

(*e*) *Vide supra*, p. 14.

(*d*) (1851), 17 Q. B. 551.

(*e*) The appellants also contended that they were not rateable at all, but this contention was rejected on the authority of *R. v. Longwood* (1849), 13 Q. B. 116, *supra*, p. 290.

(*f*) *Mayor, etc., of Worcester v. Droitwich* (1876), 2 Ex. D. 49: *vide infra*, p. 293.

(*g*) 17 Q. B., at p. 561.

paid for the additional supply of water, and still each mill-owner would be liable to be assessed, in his own township, upon the mill according to its increased value from the additional supply of water. In neither case would there be a double assessment in the manner supposed; for, in fixing the assessment on the mill, regard must be had to the price paid for the additional supply of water; and, the undertaking being in the hands of the commissioners who will reimburse themselves for the Kentmere assessment by a reservoir rate upon the mill-owners, when the mill-owners are assessed in their own townships, the rateable value of their mills must be estimated at an amount minus the contribution to the Kentmere assessment paid by each mill-owner" (h).

In the next year, the second case of *R. v. Longwood* (i) was decided. The commissioners of the Huddersfield Waterworks were rated for their reservoirs and pipes in Longwood (outside the township of Huddersfield). The commissioners, by their local Acts, were restricted to certain charges, and, as soon as loans had been paid off, were bound to reduce the charges so as only to cover the expenses. The sessions found that the rateable value of the reservoirs, pipes, etc., in Longwood, taken as part of the entire waterworks, was 490*l.* (k); that the intrinsic value of the works in Longwood, without taking into account the connection with the works in Huddersfield, was 150*l.* (k); that if the yearly tenant of the entire works were released from the restrictions contained in the local Acts, and able to exercise his discretion as to the water rents and rates, the rateable value of the entire works (in Huddersfield and Longwood) would be 1,100*l.*; that if the yearly tenant was to be considered as subject to the restrictions in the Acts he would make no profit. The judges in the Queen's Bench agreed in holding that the rating must stand at 490*l.*, but for exactly opposite reasons. COLERIDGE, J., in delivering the judgment of the court, pointed out that, if the actual profits were the measure of rateability, when the loans had been paid off there would be nothing to rate, and continued (l).

"This, however, is prevented by looking at the commissioners and consumers as one body, trustees and *cestui que trusts*, as it were; and when they are so considered the restricting clauses become no more than an arrangement between themselves as to the terms on which the latter will enjoy the benefits flowing from the occupation of the land. These benefits are the supply of water for the various purposes enumerated in the Act: and these arrangements have no bearing whatever on the question of rateable value

[¶] (h) Compare the judgment in *Mayor, etc., of Worcester v. Droitwich* (1876), 2 Ex. D. 49, at p. 61, *infra*, p. 295, where MELLISH, L.J., seems to overlook the necessary diminution of the value of a house, caused by the imposition of rates to meet the expenses of water supply. See also pp. 297, 298, *infra*.

(i) (1852), 17 Q. B. 871. The effect of the first case of *R. v. Longwood* (1849), 13 Q. B. 116, is stated *supra*, p. 290.

(k) The case did not explain how this sum was arrived at.

(l) 17 Q. B., at p. 881.

as between themselves and the inhabitants of Longwood. . . . The restrictions can have no bearing on the question as to the amount of the rate. It is said that to discard the consideration of them is to make the commissioners pay, not on their actual receipts, but on imaginary ones which they might, under other circumstances, receive. The answer is, that in substance the commissioners are not the occupiers nor the parties rated, nor do the water rents represent the rateable value of the land. The consumers are the occupiers really; they are really rated, *i.e.*, they pay the rate; *and the use and enjoyment of the water constitutes the rateable value*" (*m*).

COLERIDGE, *J., held that as he was bound to assume that 490*l.* (found by the sessions as the value of the works in Longwood) was the right proportion of the 1,100*l.* found to be the value of the entire works, the 490*l.* ought to stand. But WIGHTMAN and CROMPTON, JJ., held that it ought to stand because the respondents had failed to establish a higher figure, and that it was wrong to estimate the rateable value on the assumption that the tenant was free from the statutory restrictions on the charges for water.

The reasons given by COLERIDGE, J., in *R. v. Longwood*, must be taken to be now overruled by the decision of the Court of Appeal in *Mayor, etc., of Worcester v. Droitwich* (*n*), affirming the decision of BLACKBURN, J., in *Mayor, etc., of Liverpool v. Wavertree* (*o*), if those cases can still be regarded as good law. It may, however, be doubted whether the effect of still later decisions has not been to confirm the result arrived at by COLERIDGE, J., on a somewhat different ground (*p*).

The Droitwich Case.—The case of *Mayor, etc., of Worcester v. Droitwich Union* (*q*), decided that in rating waterworks occupied by a local authority, who were restricted by statute from charging more than sufficient to enable them to maintain the waterworks, the local authority could be assessed only with reference to the profit actually earned. Although this decision has been more than once followed, or assumed to be correct (*r*), yet it has not always been followed (*s*), and the writer has endeavoured to show (*t*) that it is almost impossible to reconcile it with later decisions, and that it cannot *per se* be supported, apart from those later decisions.

(*m*) An attempt is made, *infra*, pp. 299—301, to show that the words printed in *italics* correctly state the principle established by the most recent decisions.

(*n*) (1876), 2 Ex. D. 49.

(*p*) *Vide infra*, pp. 299—301.

(*o*) (1875), 2 Ex. D. 55 n.; 39 J. P. 101.

(*q*) (1876), 2 Ex. D. 49.

(*r*) See *Mayor, etc., of Peterborough v. Stamford Union* (1883), 31 W. R. 949, *infra*, p. 296; and *cf. Dewsbury and Heckmondwike Waterworks Board v. Penistone Union* (1886), 17 Q. B. D. 384, *infra*, p. 302; *Merthyr Tydfil Local Board v. Merthyr Tydfil Union*, [1891] 1 Q. B. 186, *infra*, p. 303.

(*s*) See *Overseers of Chorlton-upon-Medlock v. Chorlton Union* (1882), 51 L. J. Q. B. 458, *infra*, p. 301.

(*t*) *Vide infra*, pp. 296—301.

The corporation of Worcester were rated in respect of part of their waterworks in a parish partly within and partly without the city of Worcester, at 1,400*l.* rateable value. The corporation had borrowed for the purpose of the waterworks 48,000*l.*, of which sum 37,250*l.* had been spent in the parish for which the rate appealed against was made. The corporation purposely made very low charges for the supply of water, and less than would be charged by an ordinary trading company. It was stated in paragraph 16 of the case, that “the net income derived from the waterworks averaged about 651*l.* per annum (*u*), without any deduction having been made for rates, taxes, expenses of management, collection of water rate, depreciation of plant and machinery, and other matters which, in making out a commercial account, would have been allowed for.” The corporation contended that the provisions of the Public Health Act, 1848 (*x*), contained the only authority for them to charge a water rate on consumers of water, and that such a rate only was authorised by that Act as might be reasonably expected to defray the expenses incident to the water supply; and that the corporation were only rateable at the rent which a tenant would give for the land, if subject to the same restrictions as those under which the corporation held it, and not at the rent which a tenant entirely unfettered might give. The assessment committee contended (*inter alia*) that the rateable value should be based upon the amount which a tenant would give with liberty to raise the price of water as he might think proper, so far as not restricted by law, and that there were no restrictions by law in the present case. The Court of Appeal (affirming the decision of the Queen’s Bench Division) held that the effect of ss. 93 and 94 of the Public Health Act, 1848 (*y*), was that the corporation could not levy by means of a water rate a larger sum than that which was estimated to be required for the maintenance of their waterworks; and that the rateable value was limited by this restriction. In the course of his judgment, MELLISH, L.J., said (*z*):

“An occupier of land is not rateable in respect of the whole profit derived from the land, but only in respect of the profit which he himself derives from the land (*a*). . . . The rent, and therefore the rateable value of every house in Worcester, is increased by reason of the occupier being entitled to cheap water from the waterworks of the corporation, and

(*u*) It does not appear from the case whether, before arriving at this sum, a deduction had been made for (1) interest on capital borrowed, or (2) instalment of loan paid off. If the latter deduction had been made it is plain that (in addition to earning the income of 651*l.*) the corporation were gradually purchasing an unencumbered estate out of the profits. It is presumed, however, that no deduction had been made under either head.

(*x*) Similar provisions are to be found in s. 56 of the Public Health Act, 1875.

(*y*) Compare s. 56 of the Public Health Act, 1875.

(*z*) See 2 Ex. D., at p. 61.

(*a*) See p. 296, *infra*.

if the corporation in respect of the reservoir and waterworks were rated at the profit which a tenant under no restriction could get from the waterworks, the same profit would be rated twice over (*b*). If the waterworks were transferred to a tenant who was under no restriction as to the price he charged for water, the rateable value of the waterworks would be increased, but there would be a corresponding diminution of the rateable value of the premises supplied with the water. We may also observe that the reservoir by itself, without the power of connecting the reservoir with the houses by pipes running through the streets, is probably worth nothing, and certainly is not worth 65*l.* a year; and it is the same Act of Parliament which gives the power to lay pipes and therefore creates the value of the reservoir, which contains the restrictions on the amount of profit which the occupiers of the reservoirs can earn. Even in the case of the reservoirs of public companies established by Act of Parliament to supply towns with water, in estimating the rateable value of the reservoirs, the court only considers the amount of profit which the terms of their Act enable the company to earn, not the profit which the company might earn if Parliament had enabled the company to establish waterworks without restriction as to the price to be charged to consumers (*c*). So, also, in rating a railway, or any other work made under an Act of Parliament, the calculation must always commence with the profits, which are actually earned according to the terms of the Act of Parliament, not with the profits which might be earned if the company was unlimited in its charges. It follows, therefore, that according to the contention of the assessment committee, the corporation are rateable in respect of their reservoir at a higher sum than a waterworks company established by an Act of Parliament would be rateable, and are rateable on an assumption which not only is not true, but which cannot be true, that a tenant is in possession of a reservoir with a monopoly of the supply of a particular town with water, and is unlimited in respect of his charges."

The judgment in *Mayor, etc., of Worcester v. Droitwich Union*, from which the preceding passage is taken, affirmed the decision in *Mayor, etc., of Liverpool v. Wavertree* (*d*), which related to the waterworks belonging to the Liverpool Corporation, and in which BLACKBURN, J., said :

"The whole question turns on the Parochial Assessments Act, 1836, which says the occupier is rateable at what a tenant from year to year will give as the rent, who takes the land subject to the same restrictions as those under which the appellants hold it. Now a tenant would only give such a rent as the restrictions imposed by statute would enable him to earn, and the rateable value is to be based upon that rent" (*e*).

Waterworks rateable, but rateable at nothing.—The two cases last quoted were carried to their logical conclusion in *Mayor*,

(*b*) See pp. 297, 298, *infra*.

(*c*) See the remarks hereon, *infra*, p. 305, and *cf.* *Seulcoates Union v. Hull Docks*, [1895] A. C. 136, *supra*, p. 239.

(*d*) (1875), 2 Ex. D. 55 n.

(*e*) See the remarks hereon, *infra*, p. 297.

etc., of *Peterborough v. Stamford Union* (*f*). In that case, the annual working expenses and the cost of maintenance (exclusive of interest on loans) were 913*l.* ; the receipts were only 759*l.*, leaving a deficit of 154*l.*, which was made good out of the borough rate. The corporation had borrowed 79,285*l.* at 4 per cent., and the interest and instalments of principal were paid out of the borough rate. The parish of Wilsthorpe, for which the rate under appeal was made, was outside the borough of Peterborough, and in that parish 17,500*l.* had been expended on works. It was held, on the authority of the *Droitwich Case* (*g*) and *Mayor, etc., of Liverpool v. Wavertree* (*h*), that the works in Wilsthorpe were rateable, but that the rateable value was nil, because that was the rent which a tenant would pay if subject to the same restrictions as were imposed upon the municipal corporation (*i*).

The decision in the Droitwich Case unsound.—It is submitted that the decision in *Mayor, etc., of Worcester v. Droitwich Union* (*k*), is unsound in law, and leads to anomalous results, and further that it is inconsistent with later decisions. First, it is unsound because the judgment of MELLISH, L.J., (*l*), will be found to be based upon the proposition that “an occupier of land is not rateable in respect of the whole profit derived from the land, *but only in respect of the profit which he himself derives from the land.*” But rateability is the creation of statute, and the word “profit” is not in any of the statutes creating rateability or defining the measure of rateable value. Under the Parochial Assessments Act, 1836 (*m*), the measure of rateable value is the rent at which the premises to be rated may be expected to let ; in other words, rateable value is measured not by the tenant’s income, but by one of his outgoings. The judgment of MELLISH, L.J., substitutes, as the basis for calculating rateable value, the profit or income which the tenant receives, for the rent which the tenant might be expected to pay ; and then proceeds to argue from the substituted basis as though it were the statutory basis. The substitution of one basis for the other would not matter, if it could be shown that rent will vary in proportion to the profit which the tenant makes

(*f*) (1883), 31 W. R. 949. The authority of this case was shaken by *West Bromwich School Board v. Overseers of West Bromwich* (1884), 13 Q. B. D. 929, *supra*, p. 138, and MATHEW, J., expressly dissented from it : see 13 Q. B. D., at p. 939.

(*g*) (1876), 2 Ex. D. 49.

(*h*) (1875), 2 Ex. D. 55 n.

(*i*) See the remarks of Lord ESHER, M.R., in *Dewsbury and Heckmondwike Waterworks Board v. Penistone Union* (1886), 17 Q. B. D. 384, at p. 387, *infra*, p. 302.

(*k*) (1876), 2 Ex. D. 49.

(*l*) See the passage set out on p. 294.

(*m*) 6 & 7 Will. 4, c. 96, set out in Appendix II. See also as to the Metropolis, the definition of rateable value in s. 4 of the Valuation (Metropolis) Act, 1869.

for his occupation. But that certainly cannot be shown (n). Where a house is occupied solely as a private dwelling-house, the occupation is not a source of profit, but of loss, to the occupying tenant. But if he wants the house, from whatever motive, he will be willing to pay a rent for it; and the amount of that rent will depend upon two considerations, viz., what other persons would give for that house, and what rent he would have to give for another equally suitable house; the precise amount of the rent being ultimately fixed by "the higgling of the market." It would be absurd to suggest that the rateable value of a dwelling-house depended on the amount of profit which a tenant could make out of his occupation of the house; and it appears to be equally absurd to say that the rateable value of waterworks belonging to a municipal corporation depends on the profit it makes out of the occupation. The judgment of MELLISH, L.J., in *Mayor, etc., of Worcester v. Droitwich Union (o)*, ignores the finding in the special case that, in fixing the rate, the corporation "took into consideration, not so much the profit to be made out of the water as a commercial speculation, as its value as a sanitary agent in preserving the health of the city, and the necessity of bringing the supply within the reach of the poorest class of inhabitants, and in order to induce the inhabitants to discontinue the private sources of supply; and they accordingly fixed a price which has left but little profit above the actual cost of supply, but which has effected the object they had in view by promoting the general use of the water throughout the city." The judgment, therefore, has not only abandoned the statutory measure of rateable value (viz., the rent), but has adopted another measure, viz., the profits made out of the occupation, where it is found that the occupation is not carried on solely, or even mainly, with a view to earning profits.

So, too, the statement made by BLACKBURN, J., in *Mayor, etc., of Liverpool v. Wavertree (p)*, that "a tenant will only give such a rent as the restrictions imposed by statute would enable him to earn," though obviously true of a tenant whose sole object was to make profit out of his occupation, is as obviously untrue of a tenant whose object in occupying is to perform a public duty, and to whom it is more important to perform that duty than to make a profit (q).

It may further be noticed that in the judgment of MELLISH, L.J. (r), in the *Droitwich Case*, it is suggested that to rate the waterworks at their full value would involve the rating of some

(n) *Vide supra*, pp. 128, 140.

(o) (1876), 2 Ex. D. 49: see paragraph 6 of the case, on p. 50.

(p) (1875), 2 Ex. D. 55 n.: *vide supra*, p. 295.

(q) *Cf. R. v. School Board for London* (1886), 17 Q. B. D. 738; *Ryde's Rat. App.* (1886—1900), 235: *supra*, pp. 138, 154.

(r) *Vide supra*, pp. 294, 295.

profits twice over, because "the rateable value of every house in Worcester is increased by reason of the occupier being entitled to cheap water from the waterworks of the corporation." The arithmetic here is unsound, because several figures in the calculation are omitted. It is true that the rent, and therefore the rateable value, of a house is increased by reason of the occupier being able to obtain cheap water. But where the waterworks are owned by the local authority in whose district the house is situated, the interest on capital borrowed and the instalments of principal paid off, together with any deficiency in the waterworks account, have to be provided for out of the rates levied by the local authority on the houses and other property in its district. The rates levied by the local authority tend to diminish the rent (*s*), and, therefore, to diminish the rateable value of all property in their district; for the tenant, in considering the rent he can afford to pay, takes into account the aggregate amount of the rates levied on the property he is about to take. Any increase in the rates levied on the waterworks (if the charges made for water remain unaltered) would increase the rates which must be levied by the local authority, and *pro tanto* would diminish the rateable value of the property in the district. Suppose the local authority reduce their charges for water so as to lose 1,000*l.* a year on their water account, which is made good by increasing the general district rate; the reduction of the water charges tends to increase the rateable value of the district, and the increase in the general district rate tends to reduce it to precisely the same extent. It may be that the benefit and the burden do not fall equally on the same property, and that one man is burdened for another man's benefit; but there is no double taxation (*t*).

Anomalies resulting from the Droitwich Case.—The rateable value of the waterworks in *Mayor, etc., of Worcester v. Droitwich Union* (*u*), was fixed by the judgment of the Court of Appeal at 540*l.*, for the parish to which the appeal related. But for the purpose of the works in that parish the corporation had expended 37,250*l.* of borrowed money (*x*). It does not appear what interest was paid, but it can hardly have been less than 1,117*l.*, and was probably more. The corporation, therefore, voluntarily incurred an annual liability of 1,117*l.* or more, in order to provide themselves with property which, according to the judgment of the Court of Appeal, was worth a rent of 540*l.* It was not suggested

(*s*) Where the landlord is rated instead of the occupier, the diminution of the net rent is obvious; and in calculating the rateable value from that rent, a corresponding diminution of rateable value would necessarily follow.

(*t*) See also the judgment of Lord CAMPBELL, in *R. v. Kentmere* (1851), 17 Q. B. 551, at p. 561, *supra*, pp. 291, 292.

(*u*) (1876), 2 Ex. D. 49.

(*x*) *Vide supra*, p. 294.

that the capital had been injudiciously expended, or that any of it had been lost; but, if not lost, what had become of it? Again, in *Mayor, etc., of Peterborough v. Stamford Union* (y), the corporation had borrowed 79,285*l.* at 4 per cent., in order to construct waterworks which were held to have no rateable value at all.

Another difficulty arises if the principle of the *Droitwich Case* be carried to its logical conclusion. If the court were right in holding (z) that the Public Health Acts did not allow the corporation to charge more than was required for the maintenance of the works, it follows that they could make no profit (in the ordinary commercial sense); and if they were right in holding that "an occupier is rateable only in respect of the profit which he himself derives from the land" (a), it follows necessarily that the waterworks could have no rateable value in the hands of the corporation. The rateable value fixed by the court appears to have been based on what was called in the case (b) an average "net income" of 651*l.*, "without any deduction having been made for rates, taxes, expenses of management, collection of water rate, depreciation of plant and machinery, and other matters which in making out a commercial account would have been allowed for." But such an arbitrary omission of deductions (all of which are obviously proper) cannot be sound, and it was probably adopted by the appellants to avoid the absurdity of producing a minus quantity as the rateable value, which would have exposed the fallacy of basing the calculations on the so-called "profits."

The Droitwich Case inconsistent with later decisions.—The *Droitwich Case* (c) lays down the proposition that where the profits to be made by the occupation of a hereditament are restricted by statute, the rateable value is similarly restricted, and must be calculated with reference to the restrictions on the profits. This may perhaps be summarised by saying that as profits diminish, rateable value diminishes. Following this out to its logical conclusion, the necessary corollary is that when the profits are nil, the rateable value must be nil. This contention was raised, and overruled in *West Bromwich School Board v. Overseers of West Bromwich* (d), and still more clearly overruled in *R. v. School Board for London* (e). In the latter case, BOWEN, L.J., said: "It does not matter whether the School Board wants the premises for the purpose of profit, or will make a profit out of them; the question

(y) (1883), 31 W. R. 649; *supra*, p. 296.

(z) *Vide supra*, p. 294.

(a) *Vide supra*, p. 294.

(b) See paragraph 16, which is set out *supra*, p. 294.

(c) *Mayor, etc., of Worcester v. Droitwich Union* (1876), 2 Ex. D. 49.

(d) (1884), 13 Q. B. D. 929; *supra*, p. 138.

(e) (1886), 17 Q. B. D. 735; Ryde's Rat. App. (1886—1890), 235; *supra*, pp. 138, 154, 155.

is whether the School Board wants and would take them." And FRY, L.J., said: "It does not by any means follow that, because there is no profit, there is no value." Nor could it be said that the principle here laid down applied only to the property of a School Board, which was temporarily, and as it were accidentally, prevented from being a source of profit, but which in the hands of another occupier might be made profitable; for the principle was extended to sewage works (*f*), and even to sewers (*g*). In each of the cases just referred to the rateable value ultimately confirmed was a substantial sum. Consequently, if the decision in *Mayor, etc., of Worcester v. Droitwich Union* (*h*) be still regarded as good law, this result follows: property which is incapable both in law and in fact of producing any profit at all, is rateable at a substantial sum; but if property produces any profit, however small, under statutory restrictions which prevent any larger profit, the amount of the profit made limits the rateable value. So that if a profit of 1*l.* be made, the rateable value cannot exceed 1*l.*; but if no profit at all either is or can be made, the rateable value may be 1,000*l.* or more.

Although the *Droitwich Case* was not expressly referred to by Lord HERSCHELL, in giving the judgment of the House of Lords in *London County Council v. Erith and West Ham* (*i*), yet the judgment does contain a passage which shows under what conditions a statutory restriction on profits may limit rateable value. Lord HERSCHELL said (*k*):

"There is no doubt a certain class of cases in which the amount of profit which can be earned by the occupation of a hereditament is very material in ascertaining the sum at which it should be assessed. In the case of gas-works, waterworks, and other industrial undertakings where a hereditament is enhanced in value by its connection with a profit-bearing undertaking, the profits earned and the share of those profits attributable to any particular hereditament have to be taken into account, and in such cases as these any restrictions which the law has imposed upon the profit-earning capacity of the undertaking must, of course, be considered. But I do not think this class of cases affords any guide to the assessment of such hereditaments as those [viz., sewers and sewage works] with regard to which your lordships have now to lay down the proper principle of rating" (*l*).

(*f*) See *Mayor, etc., of Burton-upon-Trent v. Burton-upon-Trent Union* (1889), 24 Q. B. D. 197; *Ryde's Rat. App.* (1886—1890), 314; *supra*, p. 140; *London County Council v. Erith and West Ham*, [1893] A. C. 562; *Ryde's Rat. App.* (1891—1893), 413; *supra*, p. 141.

(*g*) See *London County Council v. Erith and West Ham, ubi supra*; *Ystrad-fedyg and Pontypridd Sewerage Board v. Newport Union*, [1901] 1 K. B. 406; *supra*, p. 143.

(*h*) (1876), 2 Ex. D. 49; *vide supra*, p. 293.

(*i*) [1893] A. C. 562; *Ryde's Rat. App.* (1891—1893), 413.

(*k*) [1893] A. C., at p. 592; *Ryde's Rat. App.* (1891—1893), at p. 428.

(*l*) This passage was explained by Lord HERSCHELL, in *Seulcoates Union v. Hull Docks*, [1895] A. C. 136, at pp. 149, 150; *supra*, p. 241.

It seems clear that in speaking of "gasworks, waterworks, and other industrial undertakings," and of "a profit-bearing undertaking," Lord HERSCHELL was referring to the undertakings of trading companies, the object of whose occupation was to make a private profit, and that he intended to distinguish them from the undertakings of a local authority held for the discharge of some public duty or in the public interest.

The fallacy which underlies the reasoning in the *Droitwich Case* (*m*) appears to consist in this: the decision that a municipal corporation must be rated with regard to the profits actually made, under the existing statutory restrictions, because a trading company is so rated, overlooks the fact that the true basis for rating a trading company is the rent it might be expected to give, and that the reason why a trading company is rated with regard to the profits actually made is that *the profits create the only motive which will induce the trading company to become a tenant*. But many other motives besides the possibility of earning profits may induce a municipal corporation or other local authority to become occupiers of waterworks.

Cases in which the Droitwich Case has been followed or distinguished.—In *Overseers of Chorlton-upon-Medlock v. Chorlton Union* (*n*), the appeal related to board schools and public baths and laundries, out of each of which the profit allowed by statute to be made was nil. The court were asked to determine the proper mode of estimating the rateable value, and the following modes were suggested, viz.:

1. The annual interest actually paid on money borrowed and expended in the purchase or erection.
2. The annual rent which a contractor would require if he erected the premises as they stood for the purposes for which they were used.
3. The amount of rent which a tenant, unfettered as to user and unrestricted as to charges, would give if the premises were in the market.
4. The annual profit which the corporation (the owners of the baths and laundries) or school board makes or can make.

Now, of these methods, the fourth precisely follows, and the third directly negatives, the rule laid down in *Mayor, etc., of Worcester v. Droitwich Union* (*o*), but the court rejected the fourth and adopted the third, and professed to distinguish the *Droitwich Case*, on grounds which appear to the writer unintelligible.

(*m*) (1876), 2 Ex. D. 49.

(*n*) (1882), 51 L. J. Q. B. 458; 46 J. P. 535.

(*o*) (1876), 2 Ex. D. 49.

In *Dewsbury and Heckmondwike Waterworks Board v. Penistone Union* (*p*), the interest paid by the appellants on borrowed capital was 9,902*l.*, and the ordinary working expenses for the year in question were 2,118*l.* (*q*) : the appellants received 9,751*l.* for water rents, and 6,127*l.* from public water rates, levied to supply the difference between expenditure and the amounts received from water rents which were the maximum rents allowed by the local Act. The main question raised by the case was whether the sum received from water rates ought to be taken into account in estimating the rateable value of the waterworks, and the Court of Appeal held that it was. The court did not disapprove of the *Droitwich Case*, though it may be doubted whether they adopted the method of calculation used in that case (*r*). Lord ESHER, M.R., said (*s*) :

“ The legal principle is this : You are to take the annual value (subject to all the deductions which ought to be allowed) of the property to be the rent which a hypothetical tenant from year to year would give for it, if he had it upon the same terms as the actual owner has it. In that view the head-note to *Mayor, etc., of Peterborough v. Stamford Union* (*t*) must be expanded and read thus (adding the words in italics) : ‘ Where land is occupied by a local authority for public purposes, the land is to be assessed to the poor rate at the rent which a tenant would pay, if subject to the same restrictions as are imposed, *and entitled to the same advantages as are conferred*, upon the local authority.’ That is the true doctrine. Then the question is this : Is it an advantage to a man to hold land upon these terms, viz., that if there is a deficiency in the rents which he can obtain in any one year, he has a right to have that deficiency made up by a rate, but, if in any one year the rents which he obtains are more than his expenses, then he has the advantage of the profits? Of course, it is a great advantage to a tenant that he can never lose in any one year, while in other years he may gain, and that advantage must be taken into account in estimating the rent which he would give for the land if he were placed in the same position as the actual owner.”

As this judgment materially qualifies the decision in *Mayor, etc., of Peterborough v. Stamford Union* (*t*), which was merely the logical deduction from *Mayor, etc., of Worcester v. Droitwich Union* (*u*), it follows that the *Droitwich Case* also must be taken

(*p*) (1886), 17 Q. B. D. 384 : affirming (1885), 16 Q. B. D. 585.

(*q*) There were apparently some other expenses, though not specified in the case, since the two items here given are substantially less than the aggregate amount received from water rents and water rates. Perhaps the annual instalment of principal paid off accounts for the difference : as to this, *vide infra*, p. 303.

(*r*) It is believed (though it is not very clear) that in the *Droitwich Case* (1876), 2 Ex. D. 49, *supra*, p. 294, both the interest on loans and the instalments of principal were paid out of the general district rate, and were not brought into account in estimating the rateable value of the waterworks ; nor were the sums raised to meet those payments regarded as a source of income.

(*s*) 17 Q. B. D., at p. 387.

(*t*) (1883), 31 W. R. 949 ; *vide supra*, p. 296.

(*u*) (1876), 2 Ex. D. 49 ; *supra*, p. 293.

with a similar qualification. But the judgment above cited from the *Dewsbury Case* appears to be infected with the same vicious reasoning as the *Droitwich Case*. For it assumes that the only motive which would induce a local authority to take a system of waterworks is the prospect of earning a profit; and that the rateable value is (by some process of calculation) to be deduced from the profits; whereas under the Parochial Assessments Act, 1836, s. 1, the measure of rateable value is not what the occupier makes out of, but what he would give for, his occupation. Moreover, the logical result of the principles acted upon in the *Dewsbury Case* is to produce a rateable value of nothing. At the time of the appeal the "deficiency" made good by levying water rates amounted to 6,127*l.*; and if profits (or the hope of earning profits) be essential to rateable value there was nothing to rate. For after bringing into account the sum raised by water rates, there was no surplus, and the deficiency had been merely made good. How the appellants showed a balance of profits to represent rateable value does not appear from the special case; but if they did so by omitting from the expenses the instalment of the capital debt paid off in the year, as being an expense which would fall upon the hypothetical landlord, not upon the hypothetical tenant, then it is obvious that they ought to have omitted from the other side of the account so much of the water rates as was levied to pay that instalment of capital (*c*), and again there would be nothing to rate. For so much of the water rate as was levied to provide for a payment falling on the hypothetical landlord must be regarded as levied by the board in their capacity of landlords, and could not be treated as part of the income which the hypothetical tenant would receive.

In *Merthyr Tydfil Local Board v. Merthyr Tydfil Union* (*y*) the question asked was whether the sum raised by the general district rate to meet the deficiency on the waterworks account, and to pay the expenses, including (*inter alia*) interest on borrowed capital (*z*), ought to be taken into account, having regard to the special provisions of the local Act, under which all advances made out of the general district rate were to be from time to time repaid out of the balance standing to the credit of the waterworks account. It was held that the sums advanced out of the general district rate must be regarded as advances by way of loan to the hypothetical tenant, and not as available in his hands as an item of gross profits. It must be specially noticed that the court were

(*c*) This was admitted to be the proper method of calculation in *Merthyr Tydfil Local Board v. Merthyr Tydfil Union*, [1891] 1 Q. B. 186.

(*y*) [1891] 1 Q. B. 186.

(*z*) It was admitted (and, as the court held, rightly admitted) that the annual instalments of capital paid off, and so much of the general district rate as was levied to pay those instalments, must be eliminated from either side of the accounts.

merely asked whether a particular item in a long calculation could be brought into account or not : they did not decide whether the main scheme of the calculation was correct. That scheme followed (more or less closely) the scheme adopted in *Mayor, etc., of Worcester v. Droitwich Union (a)*, of calculating rateable value from profits, or from sums regarded as profits.

The result of the cases referred to in the pages immediately preceding is as follows : The decision in *Mayor, etc., of Worcester v. Droitwich Union (b)*, was followed in *Mayor, etc., of Peterborough v. Stamford Union (c)*, but the latter case was affirmed in *Dewsbury Waterworks Board v. Penistone Union (d)*, with such a qualification as to modify materially the rule laid down in the *Droitwich Case* ; while in *Merthyr Tydfil Local Board v. Merthyr Tydfil Union (e)*, the principle of the *Droitwich Case* was neither affirmed nor overruled : whereas in *Overseers of Chorlton-upon-Medlock v. Chorlton Union (f)*, the *Droitwich Case* was clearly not followed, but was distinguished on somewhat doubtful grounds.

What can be substituted for the rule laid down in the Droitwich Case.—The question remains whether, assuming that the principle acted on in *Mayor, etc., of Worcester v. Droitwich Union (g)* is wrong, any other more satisfactory method of calculation can be suggested. Probably it may be assumed that no tenant, other than the local authority, who are the owners, would take the waterworks ; the question, then, is narrowed to this, at what rent might the waterworks be expected to be let to the local authority ? To answer this question one may ask two other questions : (1) What have the local authority in fact spent in order to become owners of the existing waterworks ? and (2) if they were not owners of the existing waterworks, what would they be obliged to spend in order to acquire an equally suitable system of waterworks elsewhere ? In *Liverpool Corporation v. Llanfyllin Union (h)* it was agreed by both sides that in the case of a reservoir belonging to the Liverpool Corporation, interest on structural value must be the basis of the calculation of rateable value, and the Court of Appeal adopted that view. And if this method of calculation be applied to a reservoir, it is difficult to see why it should not be to the system of pipes connected with the reservoir, where the whole system is occupied for some other motive than that of making profit.

(a) (1876), 2 Ex. D. 49 ; *supra*, p. 293.

(b) (1876). 2 Ex. D. 49 ; *supra*, p. 293.

(c) (1883). 31 W. R. 949 ; *supra*, p. 296.

(d) (1884), 17 Q. B. D. 384 ; *supra*, p. 302.

(e) [1891] 1 Q. B. 186 ; *supra*, p. 303.

(f) (1882), 51 L. J. Q. B. 458 ; *supra*, p. 301.

(g) (1876). 2 Ex. D. 49 ; *supra*, p. 293.

(h) [1899] 2 Q. B. 14 ; *supra*, p. 177. See also *Mersey Docks v. Birkenhead* [1900] 1 Q. B. 143, at p. 148.

It has been a common practice at quarter sessions to take interest on capital outlay as evidence of the rateable value of such property as board schools (*i*), industrial schools (*k*), a county lunatic asylum (*l*), and sewage works (*m*); and the practice was approved by the House of Lords in *London County Council v. Erith and West Ham* (*n*), subject to the proviso that “no higher rent must be fixed (by taking a percentage on cost) than that which it is believed the owner would really be willing to pay for the occupation of the premises” (*o*).

The restrictions imposed by statute, which were supposed in the *Droitwich Case* (*p*) to create so much difficulty, involve no difficulty at all if the method above suggested be adopted. For if a local authority with full knowledge of all the statutory restrictions, and neither expecting nor desiring to make a pecuniary profit, voluntarily borrow a large sum of money and burden the ratepayers with the payment of interest thereon, in the absence of evidence to the contrary, one may assume that the local authority thought it worth while to incur the liability, in order to obtain the waterworks: it is therefore unnecessary to inquire what rent some imaginary and impossible tenant would give under altered conditions of law and fact, when we have ascertained the sum which under existing conditions, the actual occupier was once willing, and is presumably still willing, to give for the premises to be rated. If it be shown that some part of the capital expenditure was incurred for future (not for existing) requirements, some deduction from the total capital expenditure ought to be made, or the rate of interest thereon may be reduced (*q*).

If it is assumed that the waterworks are wanted, then (according to this view) their value cannot be less, though it may be more, than the minimum cost at which they can be provided. If a local authority are supplying water at such charges as to make a substantial commercial profit, there appears to be no reason why the local authority should not be rated at the rent which they would give in order to be able to earn that profit, in the same way as a

(*i*) See *St. Pancras Vestry v. School Board for London*, Ryde's Rat. App. (1886—1890), 169. See also the remarks of CAVE, J., in *R. v. School Board for London* (1885), 55 L. J. M. C. 33, at p. 37, cited, *supra*, p. 176.

(*k*) *Westminster Union v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1891—1893), 31.

(*l*) *Middlesex County Council v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1891—1893), 115.

(*m*) *London County Council v. Woolwich Union*, Ryde's Rat. App. (1891—1893), 126.

(*n*) [1893] A. C. 562, at p. 593; Ryde's Rat. App. (1891—1893), 413, at p. 429: *supra*, p. 184.

(*o*) As to the rate of interest on cost to be taken as evidence of rateable value, see pp. 182—186, *supra*.

(*p*) (1876), 2 Ex. D. 49; *supra*, p. 293.

(*q*) See *Liverpool Corporation v. Llanfyllin Union* (1899), 80 L. T. 667; *supra*, p. 288; see also *R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359: *supra*, p. 286.

trading company is ordinarily rated. But this method ought not to be adopted (where the profits are smaller), so as to reduce the rateable value of the works as a whole below the sum which the local authority would have to pay, by way of interest on capital borrowed, in order to acquire the works. The local authority would give that sum in any event because they are acting for the benefit of their constituents, as well as trading in order to make profit.

Apportionment of value of waterworks owned by local authorities.—If the rateable value of the entire system of waterworks owned by a municipal corporation, or other local authority, be calculated with reference to the profits actually made, as if the local authority were a trading company, there seems to be no reason why the total rateable value of such waterworks should not be apportioned among the several parishes into which the waterworks extend, in the same way as in the case of a trading company's works (*r*). It might, however, happen that the effect of following *Mayor, etc., of Worcester v. Droitwich Union* (*s*) strictly, would be to reduce the rateable value of the whole system to so small an amount that the subtraction of the rateable value of the indirectly productive portion, in accordance with *R. v. West Middlesex Waterworks* (*t*), would leave nothing (or even a minus quantity) as the rateable value of the portion directly productive of profit (*u*). This *reductio ad absurdum* furnishes an additional reason for doubting the soundness of the decision in the *Droitwich Case*.

If, however, as has been suggested, interest on capital value be taken as evidence of the rateable value of the whole waterworks occupied by a local authority, it seems that interest on the capital value (not necessarily on the actual cost) may properly be taken as the measure of the rateable value of the several parochial portions of the whole (*x*). And, on this view, it would be unnecessary to ascertain the rateable value of the whole works, in order to ascertain the rateable value of the part in any one parish; just as it is unnecessary to ascertain the rateable value of the whole undertaking of a trading company, when it is desired to determine the value of only the indirectly productive portion of their works.

(*r*) The method of apportionment is stated *supra*, p. 281.

(*s*) (1876), 2 Ex. D. 49; *supra*, p. 293.

(*t*) (1859), 1 E. & E. 716; *supra*, p. 283.

(*u*) This result was nearly reached in *R. v. South Staffordshire Waterworks Co.* (1885), 16 Q. B. D. 359; *supra*, p. 286; and was actually reached in *Mayor, etc., of Peterborough v. Stamford Union* (1883), 31 W. R. 949; *supra*, p. 296.

(*x*) The distinction between actual cost and true value is pointed out *supra*, p. 176.

CHAPTER XVI.

TOLLS.

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General remarks on rating of tolls.—It is now settled that tolls, as incorporeal property, are not *per se* rateable; but that they may be rated if they are attached or appurtenant to land, or arise out of the use of land, and so can be treated as the direct profits of the land (*a*). But although tolls as incorporeal property cannot now be rated *per se*, it may yet be necessary, in calculating the rateable value of land, to take into account the fact that the land is occupied in order to earn or receive tolls; and consequently it is wrong to ignore the tolls altogether as though they were non-

(*a*) See *R. v. Nicholson* (1810), 12 East, 330; *Williams v. Jones* (1810), 12 East, 346; *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140. The cases are considered *infra*, pp. 309, 311. Turnpike tolls were specially declared exempt by 3 Geo. 4, c. 126, s. 51, and 4 Geo. 4, c. 95, s. 31; and the exemption extended to tolls on roads made under a local Act: see *R. v. Trustees of Great Dover Street Road* (1836), 5 A. & E. 692. But the subject is now one of historic, or (at most) merely local importance: see the Statute Law Revision (No. 2) Act, 1890 (53 & 54 Vict. c. 51), s. 3.

existent (*b*). But in order to understand the subject, it is necessary briefly to glance at the history of the law of rating.

Under the statute 43 Eliz. c. 2 (*c*), the poor rate is imposed upon "every *inhabitant*, parson, vicar, and other, and every *occupier* of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods." Now it has been already pointed out (*d*) that an *inhabitant* was under the statute rateable in respect of personal property, although in *practice* personal property was in many parishes not rated. As long as an *inhabitant* as such remained rateable, whether he was or was not an *occupier* of any of the classes of property specifically mentioned in the Statute of Elizabeth, he was rateable in respect of his "ability" from whatever source derived. It was, therefore, immaterial to consider what was the nature of the tolls when an *inhabitant* was rated in respect of such tolls. If, however, a person (who was not an inhabitant) was rated in respect of tolls as an occupier of lands, etc., then it became material to consider whether the tolls were so connected with the land as to be part of the value of the occupation. The Poor Rate Exemption Act, 1840 (3 & 4 Viet. c. 89), enacts that "it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor." Consequently it is *now* necessary in every case to consider the nature of the tolls, when it is sought to rate them, since the only person who can be rated is an "occupier of lands, etc.," and he can be rated in respect of tolls only when they are so connected with the "lands" of which he is occupier as to constitute part of the value of the occupation.

Tolls not rateable per se: ferries.—The earliest reported case relating to the rateability of tolls appears to be *R. v. Corporation of Wickham* (*e*), in which it was held that the corporation of Wickham were rateable in respect of market tolls payable to them (apparently) as owners of the soil of the market (*f*). In a large number of cases (as will be seen, *infra*, Chapter XVII.) canal tolls were rated, in which cases, however, the question did not turn so much on the rateability of the property as on the proper place where the tolls were to be rated.

The first decision that tolls, as an incorporeal hereditament, are

(*b*) See *R. v. North and South Shields Ferry Co.*, *infra*, p. 311.

(*c*) Set out in Appendix II.

(*d*) *Vide supra*, p. 2. The word "inhabitant" in 43 Eliz. c. 2, means a resident and not merely an occupier: see *R. v. Jones* (1807), 8 East, 451; *R. v. Nicholson* (1810), 12 East, 330; *R. v. North Curry* (1825), 4 B. & C. 953.

(*e*) (1675), 3 Keb. 540; 1 Freem. 419; Const. 125; but see also pp. 316, 317, *infra*.

(*f*) The rating of market tolls is further considered, *infra*, pp. 316—327.

not in themselves rateable is to be found in *R. v. Nicholson* (g), in which the lessee of a ferry, not being an inhabitant resident within the township of Monkwearmouth-Shore for which the rate was made, and in which one of the landing-places was situated, was held not rateable in that township for any part of the tolls of the ferry. The facts were thus found in the case : The appellant Nicholson was an inhabitant of and lived in Sunderland, and the ferry was between Sunderland and Monkwearmouth-Shore. The fares were collected from the passengers as they entered the boat on either side of the river. The boats when not in use were locked up on the Sunderland side of the river (h). The lessee of the ferry had been rated for half of the tolls in Sunderland, and for half in Monkwearmouth-Shore. The number of passengers from each place was about the same. The case found that the place where the ferry landed in Monkwearmouth-Shore would be of little or no value of itself, if it were not used for the ferry. It was held that as the appellant was not an inhabitant in Monkwearmouth-Shore, he could not be rated there for the tolls, because he was not an occupier of any of the kinds of property made rateable by the Statute of Elizabeth ; and that the only case in which tolls could be rated was where they arose from the use of the land itself within the parish for which the rate was made (i).

Another case, *Williams v. Jones* (k), relating to ferry tolls, was decided with *R. v. Nicholson*, and was held to be governed by it. An attempt was made to distinguish *Williams v. Jones*, on the ground that the ferry boats were usually moored to a post fixed in the ground at one of the landing-places within the parish for which the rate was made ; but the case found that the owner of the ferry had not the sole or exclusive use of the landing-places, which were in the highway, though they were repaired and improved by him. The court held that (as the owner of the ferry was not found to have any property in the soil of the highway) supposing he had a right to make a special use of the highway for the purpose of securing his ferry boats, that did not make him the occupier of the highway, nor give him exclusive possession of it (l).

(g) (1810), 12 East, 330 ; 11 R. R. 398.

(h) It may be noted that in 1810, the date of the decision in *R. v. Nicholson*, the owner of ships, if an inhabitant, was rateable in respect of the ships in that parish which was regarded as their home, and from and to which they sailed : see *R. v. Jones* (1807), 8 East, 451, following *R. v. White* (1792), 4 T. R. 771.

(i) See *R. v. Wickham*, *supra* : *R. v. Cardington* (1777), Cowp. 581 ; *R. v. Staffordshire and Worcestershire Canal Co.* (1799), 8 T. R. 340 ; *R. v. St. Mary, Leicester* (1817), 6 M. & S. 400.

(k) (1810), 12 East, 346. In this case also the owner of the ferry was not an inhabitant of the parish for which the rate was made.

(l) With this decision, so far as it relates to the occupation of land by means of a post, cf. *Grant v. Oxford Local Board* (1868), L. R. 4 Q. B. 9, *infra*, p. 368, and *Manchester, Sheffield and Lincolnshire Rail. Co. v. Guardians of Hull* (1896), 75 L. T. 127, *infra*, p. 365.

The nature of a ferry considered.—It appears that in *R. v. Nicholson* (*m*), and *Williams v. Jones* (*n*), the court regarded the tolls as a payment for the use of the boats, and not for the use of the landing-places. In a note to *R. v. Nicholson* (*o*), the reporter adds the following remarks, which were apparently not used in argument :

“ In Saville’s Rep. 11, it is, indeed, said to have been holden in the Exchequer Chamber, anno 23 Eliz., that a ferry is in respect of the landing-place, and not of the water, and that the land on both sides ought to belong to the owner of the ferry. And it is not conceivable how any ferry could have originated by private authority without the assent of the owners of the land on each side, except, perhaps, where the landing on both sides was in a common highway, where the licence of the Crown would be presumed. . . . Yet it does not follow that the owner of the ferry should have the property of the soil on either side ; for the landowners upon a public river may have granted to the licensee of the King (where the dominion of the banks was not in the King himself) liberty to land passengers, etc., from his ferry boat, and to moor the boat to the shore. . . . ”

A few years after the decision in *R. v. Nicholson*, it was expressly decided in *Peter v. Kendal* (*p*) that :

“ It is not necessary that the owner of a ferry should have the property in the soil on either side. He must have a right to land upon both sides, but he need not have the property in the soil on either. It is sufficient if the landing-place be in a public highway. This is perfectly consistent with the principle laid down in *Saville*, that a ferry is in respect of the landing-place, and not of the water.”

In a more recent case, *Newton v. Cubitt* (*q*), a ferry is thus described by WILLES, J. :

“ A ferry consists in respect of persons using a right of way, when the line of the way is across the water ; there must be a line of way on land coming to a landing-place on the water’s edge ; or, where the ferry is from or to a vill, from or to one or more landing-places in the vill. The franchise is established to secure convenient passages, and the exclusive right is given because in an unpopulous place there might not be a profit sufficient to maintain the boat if there was no monopoly. The ferry is unconnected with the occupation of land, and exists only in respect of persons using the right of way.”

The effect of the decisions above cited is that ownership of a ferry is not of itself evidence of occupation of the landing-places by the owner of the ferry. The owner of the ferry may have merely an easement over the landing-places, and in that case would not be rateable in respect of the landing-places : he may,

(*m*) (1810), 12 East, 330.

(*n*) (1810), 12 East, 346.

(*o*) (1810), 12 East, at p. 334.

(*p*) (1827), 6 B. & C. 703.

(*q*) (1862), 31 L. J. C. P. 246.

however, be the occupier of the landing-places, and, therefore, rateable in respect of them. And in considering at what sum he is to be rated, the existence of the ferry and the right to take tolls may have to be taken into account, as appears from the case next cited.

Landing-places enhanced in value by reason of tolls.—In *R. v. North and South Shields Ferry Co. (r)*, the company were authorised by a special Act to maintain a steam ferry across the Tyne (a tidal navigable river), and to erect ferry houses and offices on each side of the river, and to make and repair causeways at the landing-places, and to make roads from the ferry. The company constructed landing-places in the two townships of North and South Shields, on opposite sides of the river, with a toll-house and gate on each. The bed of the river was not in either township. The tolls were collected entirely in South Shields, the rate appealed against being made for the township of North Shields. The sessions found that no tolls could have been earned on the landing-places without conveyance across the river, and that no person could use the ferry boats without the convenience of landing-places; and that the ferry was of no value without the landing-places, which were in the occupation of the company. The company were rated in North Shields, as occupiers of “ferry, landing and tolls,” at 531*l.*, half of the net profits of the ferry (*s*). The sessions confirmed the rate, but found that the rateable value of the landing-place in North Shields, without taking the tolls into account, was 72*l.* The Queen’s Bench held that the ferry and tolls could not be rated, either directly as being connected with the land, or indirectly as being part of the profit earned by the use of the land, but that the land should be rated as land rendered more valuable by being available for the purpose of earning the tolls; and, further, that the rateable value of the land could not be ascertained by dividing the profits in the mileage proportion of the land occupied by the landing-places and the length of the transit over the river. The following passages occur in the considered judgment of the court, delivered by Lord CAMPBELL, C.J. (*t*):

“When tolls are attached to, and appurtenant to manors or lands, they are rateable as land; and when they really arise from the use of lands, as in the case of canals, bridges (*u*), railways, or the pipes of water companies,

(*r*) (1852), 1 E. & B. 140.

(*s*) The sessions appear to have made no allowance at all for tenant’s profits. But such an allowance ought to have been made; for no tenant could be found for the two landing-places if he had to pay to the landlord the whole of the net profits of the ferry as rent.

(*t*) 1 E. & B., at p. 149.

(*u*) But the person rated must be the occupier of the bridge: see *R. v. Snowden* (1833), 4 B. & Ad. 713, *infra*, p. 314; *R. v. Marquis of Salisbury* (1838), 8 A. & E. 716, *infra*, p. 313; and *Percy v. Hall* (1903), Ryde & Konstam’s Rat. App. (1894–1904), *infra*, p. 315,

though not rateable *per se*, they may, after the proper deductions, be treated as the direct profits of the lands which are used in, and are the real cause of, the earning of the tolls. . . . We think that in the present case, in rating the landing-place, the profit of the tolls cannot properly be brought into the calculation as the profits of the occupation of the landing-place; which is in effect done by the rate. On the other hand, the existence of the tolls cannot be wholly excluded from consideration, but the land should be rated, not as land in that situation without reference to the tolls at all, but the value should be taken, not as the value of the land merely, but as the value of land as enhanced by being available for the purpose of earning the tolls. This appears to be the true principle according to the test laid down in the Parochial Assessments Act, 1836 (6 & 7 Will. 4. c. 96), s. 1, as it would be the rent that could be obtained, and which the company would have to pay for the land, for the purpose for which it is available under the circumstances."

Two points are to be noticed in this case (1) that the court did not exclude the tolls from consideration on the ground that they were received outside the parish for which the rate was made (*x*); and (2) that the decision that the ferry tolls (though not themselves rateable) should not be excluded from consideration in valuing the land, seems inconsistent with the decision as to lighthouse tolls in *R. v. Coke* (*y*). For the reasons given below (on pp. 330, 331), it is submitted that the judgment in *R. v. Coke* is not consistent with the Parochial Assessments Act, 1836, and the law is more correctly stated in the judgment of Lord CAMPBELL, C.J., in *R. v. North and South Shields Ferry Co.*, cited above.

"Toll-traverse" and "toll-thorough."—With regard to tolls payable for passing over land, a distinction is drawn in the old books between "toll-traverse" and "toll-thorough." The former is defined as being "the payment of a sum of money for passing over the private soil of another, or in a way not being an high street"; while "toll-thorough" is a toll taken "for passing over a highway, where the owner of the toll claims nothing in the soil," the consideration for toll-thorough being the repair of bridges or walls, or other meritorious service (*z*). The effect of the decisions is that toll-thorough is not rateable, but that toll-traverse is rateable, or rather that the occupier of land, who receives toll-traverse in respect of the right to pass over that land, is rateable in respect of that toll. Thus in *R. v. Snourdon* (*a*), the appellant was lessee under the corporation of certain tolls paid by persons entering the town of Newcastle-upon-Tyne, and was the occupier of a toll-house

(*x*) Compare the decisions as to canals, *infra*, Chapter XVII.; and as to lighthouse tolls, *infra*, pp. 327—330.

(*y*) (1826), 5 B. & C. 797; *infra*, p. 329.

(*z*) See *Lord Pelham v. Pickersgill* (1787), 1 T. R. 660; *R. v. Marquis of Salisbury* (1838), 8 A. & E. 716, where the distinction between toll-traverse and toll-thorough is fully discussed.

(*a*) (1833), 4 B. & Ad. 713.

where the tolls were collected, but was not an inhabitant in the parish for which the rate was made. It was found that the joint value of the tolls and toll-house was 500*l.*, and the value of the toll-house when separated from the tolls was only 10*l.* An attempt was made to show that the toll was a toll-traverse paid for passing over the soil which was vested in the corporation. But the court held that, assuming the toll to be a toll-traverse, still the lessee of the tolls was not an occupier of any part of the soil in respect of which the tolls arose ; that they were paid to the lessee for passing over the soil of another ; and that the lessee was rateable for the occupation of the toll-house only, and not for the tolls : the rate was accordingly reduced from 500*l.* to 10*l.*

In *R. v. Eyre (b)*, it had already been held that the lessee of the tolls of a public bridge (who was not found to be either an inhabitant or the occupier of any toll-house in the parish) was not rateable for the tolls. In *R. v. Marquis of Salisbury (c)*, the marquis (who was not an inhabitant of the parish for which the rate was made) was rated in respect of certain tolls paid for crossing a bridge, which tolls (upon an examination of the title) were held by the Queen's Bench to be toll-traverse. The bridge, which was very ancient, had been from time to time repaired by the marquis and his father ; but the tolls were actually received by a person who, under a parol agreement made with the marquis, had contracted for the receipt of the tolls. The Queen's Bench held that, on the facts above stated, there was evidence to warrant a presumption of ownership and occupation by the marquis of the bridge and of the land on which it stood ; that, as the parol agreement did not profess to demise the land, and the tolls (as such) could only pass by deed (*d*), the marquis must be considered as still in possession of the tolls, and must be rated for them, although the toll-house where the tolls were received was not within the parish for which the rate was made (*e*).

It will be noticed that in the cases above cited, distinguishing between "toll-traverse" and "toll-thorough," the distinction adopted by the court is merely another form of the rule that tolls cannot be rated unless they are received by the occupier of land as being attached or appurtenant to that land, and so can be regarded as part of the profits of the occupation of the land.

Bridge tolls.—It seems never to have been disputed that private persons building a bridge and receiving tolls from the

(b) (1810), 12 East, 416, following *R. v. Nicholson* (1810), 12 East, 330.

(c) (1838), 8 A. & E. 716.

(d) As to the question when it is permissible to look at the title of the person rated, *vide supra*, pp. 51—54.

(e) The question as to how the rating of tolls is affected by the place where they are received, is further considered, *infra*, p. 334.

public were rateable in respect of these tolls (*f*). But attempts have been made from time to time to escape from rateability on three grounds : (1) that the person rated is merely a lessee of tolls, and is not an occupier of the bridge ; (2) that the persons rated are in the position of commissioners or trustees for the public, and that the profits of the tolls are devoted to public purposes ; (3) that the toll-house, where the tolls are taken, is not within the parish though the bridge (or part of it) may be.

Rateability of a lessee of tolls.—In *R. v. Eyre* (*g*), it was held that the lessee of tolls of a public bridge could not be rated in respect of them unless he were an inhabitant in the parish (*h*), and in *R. v. Snowdon* (*i*) this decision was confirmed ; but it was held that the lessee might be rated in respect of his occupation of a toll-house. In that case the value of the toll-house (*viz.*, 10*l.*) appears to have been estimated without any reference whatever to the tolls. But the decision in *R. v. North and South Shields Ferry Co.* (*k*) seems to show that this was wrong, and in *R. v. Bedminster Union* (*l*) it was held that the lessee of a toll-house (and of the tolls paid for passing over a public bridge) ought to be rated in respect of the toll-house, valued not merely as a building, but as affording facility for collecting the tolls. But it was held by BLACKBURN, J. (and MELLOR, J., expressed a “ strong opinion ” to the same effect), that the tolls themselves were not incident to a real estate, and, therefore, were not rateable. The decision on this point was unnecessary in that particular case, as the Queen’s Bench decided in favour of the respondents on another point. But, assuming it to be correct, this decision and the cases of *R. v. Eyre* (*m*) and *R. v. Snowdon* (*n*), above referred to, seem to produce an anomaly. For, according to those cases, the lessee of the tolls of a bridge is not rateable, whereas if the persons entitled to the tolls retained them in their own hands, instead of

(*f*) See *R. v. Barnes* (1830), 1 B. & Ad. 113 ; *R. v. Blackfriars Bridge Co.* (1839), 9 A. & E. 828. And from the note to *Jones v. Mansell* (1779), 1 Doug. 302, at p. 305, it appears that the tolls of Putney Bridge were regularly rated in the parish in which the toll-house stood. (The history of the bridge will be found in *Hare v. Overseers of Putney* (1881), 7 Q. B. D. 223.) See also *R. v. Marquis of Salisbury* (1838), 8 A. & E. 716, *supra*. In cases relating to land tax a distinction has been drawn between the liability of the tolls of a bridge and the liability of the land on which the bridge stands ; see *Fauxhall Bridge Co. v. Sawyer* (1851), 6 Ex. 504 ; *Charing Cross Bridge Co. v. Mitchell* (1855), 4 E. & B. 549 ; *Waterloo Bridge Co. v. Cull* (1858), 1 E. & E. 213.

(*g*) (1810), 12 East, 416 : *vide supra*, p. 313.

(*h*) As to the liability of an inhabitant since the passing of the Poor Rate Exemption Act, 1840, *vide supra*, p. 4.

(*i*) (1833), 4 B. & Ad. 713, *supra*, p. 312.

(*k*) (1852), 1 E. & B. 140, *supra*, p. 311.

(*l*) (1876), 45 L. J. M. C. 117. The decision on this point is omitted from the report in 1 Q. B. D. 503.

(*m*) (1810), 12 East, 416.

(*n*) (1833), 4 B. & Ad. 713.

letting them, those persons would apparently be rated for them on the authority of *R. v. Blackfriars Bridge Co.* (o), *R. v. Marquis of Salisbury* (p), *R. v. Paynter* (q), and *Hare v. Overseers of Putney* (r). If the tolls are let, it is difficult to contend that the lessors remain rateable; if, therefore, the lessees are not to be rated, the effect of granting a lease is to take the tolls out of rating.

In a recent case, *Percy v. Hull* (s), the Corporation of York (who were the owners of a swing-bridge in that city) let the tolls and toll-house, under a lease which did not in terms demise the bridge itself. It was held, mainly on the authority of *Holywell Union v. Halkyn District Mines Drainage Co.* (t), that the effect and intention of the lease was to put the lessee into *de facto* possession of the bridge itself, and that such possession amounted to occupation; and that the restrictive covenants whereby the lessee was (*inter alia*) prohibited from putting up advertisements, and the corporation were entitled to open the bridge at intervals for the purposes of navigation, were consistent with an occupation by the lessee.

Tolls devoted to public purposes.—It was at one time held that if property was held for “public purposes,” it was exempt from rateability; but this doctrine was swept away by *Jones v. Mersey Docks* (u). But even before that decision, it was held, in *R. v. Blackfriars Bridge Co.* (x), that a company who had built a bridge under a local Act, and were entitled to tolls, were rateable in respect of the bridge; even though no interest or dividends had been paid to the shareholders in the company, the whole of the tolls being absorbed by payment of interest to mortgagees, the liquidation of debts, and the expenses of repairs.

But where a toll-bridge is transferred to a local authority and the tolls are abolished, the bridge being thrown open to the public, and the necessary expenses being met by local rates, the local authority have no occupation, or, at all events, have no beneficial occupation of the bridge, and are, therefore, not rateable (y).

In what parish tolls are rateable.—It was at one time held that where a bridge was situated in two parishes (z), and all the

(o) (1839), 9 A. & E. 828.

(q) (1845), 7 Q. B. 255.

(p) (1838), 8 A. & E. 716; *supra*, p. 313.

(r) (1881), 7 Q. B. D. 223.

(s) (1903), 67 J. P. 293; 19 T. L. R. 503; Ryde & Konstam's Rat. App. (1894—1904).

(t) [1895] A. C. 117, *supra*, p. 47.(u) (1865), 11 H. L. Cas. 443, *supra*, pp. 132—134.

(x) (1839), 9 A. & E. 828.

(y) See *Hare v. Overseers of Putney* (1881), 7 Q. B. D. 223, *supra*, pp. 17, 136. Compare the *Brockwell Park Case*, *Overseers of Lambeth v. London County Council*, [1897] A. C. 625, *supra*, pp. 17, 146.(z) As to the question in what parish a bridge across a tidal river is situated, *vide infra*, p. 347.

tolls were taken at one toll-house situated in one parish only, the proprietors of the tolls were not rateable for tolls in the other parish, where no tolls were taken (*a*). But this is no longer the law (*b*). In *R. v. Inhabitants of Barnes* (*c*), the Hammersmith Bridge Company were held rateable for the half of the bridge situated in the parish of Barnes in respect of tolls, all of which were received at a toll-house on the Middlesex side of the river, in the parish of Hammersmith. The Queen's Bench held that the tolls were paid for passing over the bridge, not for passing through the toll-gates; that part of the profit was therefore earned in Barnes, though the money might be actually received elsewhere; and that the company had a valuable occupation of land in Barnes, for which they were rateable in that parish.

A further question was subsequently raised in *R. v. Hammersmith Bridge Co.* (*d*) as to the apportionment of the rateable value between the two parishes, Barnes and Hammersmith, in which the approach roads lay. The company were by a local Act authorised to build a bridge, which by the Act was to be considered as half in Hammersmith and half in Barnes. They were also authorised to make approach roads in each parish, and to take tolls for the roads separately, or jointly with the tolls for the bridge. The roads were made, forming the only approaches to the bridge, and were of unequal length in the two parishes. The tolls were all taken at one gate at the entrance of the bridge, in Hammersmith. The sessions found the total rateable value at which the company ought to be assessed in the two parishes, and the question for the Queen's Bench was whether that total should be divided between the two parishes equally (*i.e.*, in proportion to the length of bridge in each parish), or unequally, in proportion to the length of the bridge and the approach roads in each parish. It was held that the tolls being paid for the passage over the river, the rateable value should be divided equally (*e*).

Market tolls.—The earliest authority on the rating of these tolls appears to be a resolution of the judges of assize in 1633 (*f*), to the effect that the profits of a market must be rated. In *R. v. Corporation of Wickham* (*g*), the corporation were held rateable in

(*a*) See the note as to Putney Bridge in *Jones v. Maunsell* (1779), 1 Doug. 302, at p. 305, cited with approval by BULLER, J., in *R. v. Aire and Calder* (1788), 2 T. R. 660, at p. 667.

(*b*) A similar change took place in the rating of canals: *vide infra*, Chapter XVII.

(*c*) (1830), 1 B. & Ad. 113.

(*d*) (1849), 15 Q. B. 369.

(*e*) The Queen's Bench expressly refrained from deciding whether the approach roads themselves were rateable.

(*f*) Dalton, 235, cited in Nolan's Poor Law, vol. i., p. 76 n. The terms of the resolution are not very clear, but the effect appears to be what is stated above.

(*g*) (1675). 3 Keb. 540; 1 Freem. 419; 1 Const. 125. The authority of this case is not very great: see *Atkins v. Davis* (1783), Cald. 315, at pp. 332, 333, 338, where

respect of a market toll, though part of it was to maintain the mayor. At the date of this decision, this distinction between the liability of an inhabitant to be rated in respect of his ability from whatever source derived, and the liability of an occupier in respect of the value of his occupation, was not so well established as it subsequently became (*h*). The report of *R. v. Corporation of Wickham* is very meagre, and in *R. v. Nicholson* (*i*), the court adopted the view that the corporation were the lords of the soil where the market was held. If this were so, the market tolls were rated not as an incorporeal hereditament, but as part of the profits arising out of the use of the soil.

In 1810 it was decided in *R. v. Nicholson* (*k*) that an occupier (as distinguished from an inhabitant) could not be rated in respect of tolls, unless those tolls were so connected with the "land" of which he was the occupier as to constitute part of the value of the occupation (*l*). In consequence of this decision it became necessary to distinguish between different classes of tolls taken in a market. A common market toll is a toll payable *by the buyer* to the lord of the market for witnessing the sale (*m*). As a sale in market overt changed the property as against all persons in the world, the buyer would be more interested than the vendor in proving such a sale, and this may have been the reason why a common market toll is payable by the buyer. But "stallage" and "piccage" are payable by the person who sells (or exposes for sale), stallage being paid for the use of a stall in the market, piccage for breaking the ground (*n*). The result of all the modern cases is that a common market toll payable on the sale of goods in the market is not rateable, while stallage and piccage (and tolls in the nature of stallage and piccage) are rateable (*o*); and the judgments in nearly all the cases decide merely under which description the

ASHURST, J., doubted the authority of Keble's Reports and Lord MANSFIELD supported it, after making inquiries as to the practice of rating the tolls in question, the result of which appears to throw doubt on the accuracy of the statement in Freeman's report that the tolls had never been rated: see also *Jones v. Mawnsell* (1779), 1 Doug. 302, where Lord MANSFIELD calls the report in 3 Keble, "a loose note by a bad reporter." Cf. *R. v. Brograve* (1769), 4 Burr. 2491, where, however, the rateability of the tolls was not considered in the King's Bench.

(*h*) *Vide supra*, pp. 3, 308.

(*i*) (1810), 12 East, 330; see pp. 340, 342.

(*k*) (1810), 12 East, 330, *supra*, p. 309.

(*l*) An inhabitant (notwithstanding this decision) remained liable to be rated in respect of his "ability," whether derived from the occupation of land or not: *vide supra*, p. 3.

(*n*) 2 Inst. 219; *Duke of Bedford v. Emmett* (1820), 3 B. & Ald. 366, at p. 370; *Duke of Bedford v. St. Paul's, Covent Garden* (1881), 51 L. J. M. C. 41; Ryde's Met. Rat. App. 313.

(*o*) *Mayor of Falmouth v. Groom* (1862), 32 L. J. Ex. 74: see also the judgment of BOWEN, J., in *Duke of Bedford v. St. Paul's Covent Garden*, *supra*.

(*o*) In *R. v. Mosley* (1823), 2 B. & C. 226, it was held that market tolls, having regard to the context, did not come within the word "tenements" in a local rating Act: see also *R. v. Manchester and Salford Waterworks Co.* (1823), 1 B. & C. 630; *Colebrooke v. Tickell* (1836), 4 A. & E. 916; compare also *R. v. Nevill* (1846), 8 Q. B. 452, cited in Chapter XXXIII., *infra*, p. 427.

particular toll in question falls, without laying down any new proposition of law.

Tolls in a market held on a highway.—In *R. v. Bell* (*p*), Bell was the lessee under the lord of the manor of certain corn tolls, consisting of a handful taken out of each sack. The market was held in the public street, where the sacks were set down for sale. The lord of the manor or his lessees also received payments for stallage from persons using stalls, and took the sweepings of the streets, and the persons taking the stallage and the sweepings were rated in respect thereof. Bell was not an inhabitant of the township, nor possessed of any property within it, except the corn tolls. It was held that he was not rateable. Lord ELLENBOROUGH, C.J., said :

“ I cannot say that the appellant (Bell) is an occupier of land. Would he not be equally entitled to this toll, although the sacks were not set down in the market but were upheld on the shoulders of those who exposed the corn to sale ? There is nothing to give this toll a corporeal quality.”

And BAYLEY, J., said :

“ Bell is assessed in the rate for corn tolls, which it is plain from the statement of the case were mere market tolls, and not incident to the soil. In *Hedley v. Welhouse* (*q*), the distinction is well taken ; for it is said, if the king grant a fair or market with toll certain to one and his heirs, to be holden in land which is borough English, and the grantee die, the heir at the common law shall have the market and the toll ; but the younger son shall have the stallage and picage with the soil, by the custom (*r*).

In *Roberts v. Overseers of Aylesbury* (*s*), the appellants were rated in respect of a market-house, and all the tolls and other payments made in respect of the market, which was held in the square in which the market-house was situated, and in the streets leading to the square. The appellants were lessees (under the lord of the manor) of the market-house, and the tolls, etc. ; they admitted liability to be rated in respect of the market-house. The tolls, etc., consisted of market-tolls proper, payable in respect of things sold in the market, of payments made for the use of stalls, tables, etc., and of payments made for temporary booths for shows. The market-tolls were admitted to be not rateable, but the other

(*p*) (1816), 5 M. & S. 221 ; followed in *Colebrooke v. Tickell* (1836), 4 A. & E. 916.

(*q*) (1598), Moore, 474, cited in 2 Str. 1239.

(*r*) Land held subject to the custom of Borough English descends to the youngest son to the exclusion of all the other children.

(*s*) (1853), 1 E. & B. 423.

payments were held to be rateable on the ground that they were paid for the use of the soil : and COLERIDGE, J., said :

“The persons here rated are not those who on market days use the stalls from time to time, and make payments to the appellants for such use. Their occupation probably would be too fleeting to render them properly rateable (t). But the persons rated are the tenants for a term of years of what is, in effect, the use and occupation of the soil of the market-place, on particular days, to be turned to profit in a particular manner.”

Before the decision of *R. v. Bell* (u), it had been already laid down in *R. v. Nicholson* (v), that tolls are not rateable *per se*, unless they are so connected with land that they can be regarded as part of the profits of the occupation. The rate being upon the occupier of land, in order to rate any person in respect of tolls, the question must be asked what land is occupied by the person to be rated. In *R. v. Bell*, the market being held in the public highway, the lessee of the corn tolls paid for corn sold in the highway could not be said to have any occupation of land which was dedicated as a highway, and of which he did not have any greater use than the rest of the public. Similarly, in *Roberts v. Overseers of Aylesbury* (y), the lessee of the market could not be said to have an occupation of the highways and market square by reason of the right to take mere market-tolls for things sold there : but the stallage-tolls were paid for a use of the soil, and the exercise of the right to allot a particular space to persons paying stallage, and to exclude persons refusing to pay it, might well be regarded as an occupation of land within 43 Eliz. c. 2, s. 1.

Intermittent use of market.—In *Roberts v. Overseers of Aylesbury*, cited above, the court appear to have taken no notice of the fact that the occupation of the lessee in respect of the stalls was intermittent, and was limited to market and fair days. In a very similar case (*Williams v. Overseers of Wednesbury* (z)), this point was specially dealt with. In that case, the appellant (as lessee of the market) had the right to take stallage and other tolls in a market held on land, part of which was dedicated as a highway : it was held by the Queen’s Bench Division that he was

(t) In *Holledge’s Case* (1620), 2 Rolle’s Rep. 238 ; 1 Const. 123, it was held that the lessee of the stall of a market (who frequented the market once a week, and then left the town taking all his goods with him) was not chargeable with a church rate : see also *Spear v. Bodmin* (1880), 49 L. J. M. C. 69, *infra*, p. 327 ; *R. v. St. Pancras* (1877), 2 Q. B. D. 581, *supra*, p. 10.

(u) (1816), 5 M. & S. 221, *supra*, p. 318.

(v) (1810), 12 East, 330, *supra*, p. 309.

(y) (1853), 1 E. & B. 423.

(z) (1890), Ryde’s Rat. App. (1886—1890), 327.

rateable in respect of all the payments. Lord COLERIDGE, L.C.J., said :

"It is found in the case that the appellant is in exclusive occupation of the market on two days in the week, and that he has the exclusive control on those days. It is said that that is not enough because the occupation is intermittent : but so it was in *Roberts v. Aylesbury* (a), and the court held payments for such use and occupation rateable. Here the appellant is in occupation and his occupation is rendered more valuable by his right to take stallage dues. It is objected that the market-place is found by the sessions to form part of a highway, and that there can be no exclusive occupation of land which is dedicated to the public as a highway. That proposition is far too wide (b). Moreover, the House of Lords decided in *Attorney-General v. Horner* (c) that there may legally be a highway over land part of which is included in a market. In the present case the market has been in existence since the reign of Queen Anne, perhaps before that. We must assume that the market has a legal origin, and, therefore, that the land was dedicated as a highway subject to the existing right to a market. If so, the market rights will supersede the right of way. Consequently, the appellant can legally have that exclusive occupation which has been found by the sessions."

Tolls taken in an enclosed market.—Some of the more modern cases dealing with tolls taken in enclosed markets are not easily to be reconciled with one another. The court seem to have asked the very difficult questions,—do the tolls arise out of the occupation of land or not? and, are they paid for the use of land or by virtue of a franchise merely? It is submitted that the better test is to inquire (1) whether the person rated is an occupier of "land" within 43 Eliz. c. 2; and (2) if so, does he, by means of that occupation, receive tolls which he would not receive without that occupation (d). If either of these questions is answered in the negative, then the tolls may be left out of consideration altogether. But if both the questions are answered in the affirmative, then it appears that in considering what rent would be given by the hypothetical tenant, any tolls which would not be received without the occupation of the market must be taken into account, whether those tolls owe their origin to a franchise or not; for such tolls would be taken into account by the actual lessee of the market. And it seems that, for this purpose, no distinction ought to be drawn between a payment made for the use of a

(a) (1853), 1 E. & B. 423.

(b) The learned judge was, perhaps, thinking of tramways, which have been held rateable: *vide infra*, p. 330.

(c) (1885), 11 App. Cas. 66.

(d) These were the questions asked in *R. v. Nicholson* (1810), 12 East, 330; 11 R. R. 398; and in *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140, cited *supra*, pp. 309, 311. Note that the question is not whether the occupation gives a title to the tolls, but whether it gives the means of earning the tolls: see *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18; *supra*, p. 166.

particular stall, and a payment made to the occupier of the market for the right to enter that market. In rating a racecourse (*e*), or a public cricket ground, where the profits earned by the occupier were made the basis for ascertaining the rateable value, it would be impossible to draw any distinction between receipts from tickets for seats numbered and appropriated to the holder of the ticket, or from tickets for unnumbered and unappropriated seats in a particular stand, and receipts from gate-money paid for the right of entering and walking about. There appears to be a fallacy underlying the argument which has been from time to time put forward, that a person paying for the right to enter a market has no exclusive occupation of any specific portion of the soil, but a mere easement. The argument has no application where the person rated is the person who receives—not the person who makes—the payment for the right of entry. If the person rated has an exclusive occupation of the market, then *ex hypothesi* the persons paying for the right of entry are not the occupiers of the soil: and it is as immaterial to say that they have a mere easement as to say that persons paying toll for crossing a bridge have a mere easement or right of passage. It must, however, be confessed that the fallacy here pointed out appears to have been overlooked in *R. v. Casswell* (*f*), and *Mayor of London v. St. Sepulchre* (*g*); at all events it is not very easy to reconcile those cases with *Duke of Bedford v. St. Paul's, Covent Garden* (*h*).

Conflicting decisions as to enclosed markets.—In *Mayor of London v. St. Sepulchre* (*i*) the corporation of London, under a local Act, built a market-house, shops, and stalls, and constructed streets and approaches to the market. The soil of the ground, the market-house and stalls, and the streets were vested in them; and they were entitled to tolls in respect of meat, poultry, etc., payable immediately on the meat, poultry, etc., entering or being brought into the market. The court held, on the authority of *R. v. Bell* (*j*) that the tolls were not rateable, being taken, not in respect of the soil, but in respect of the franchise of the market. In *R. v. Casswell* (*k*), under certain local Acts, the corporation of Wolverhampton were possessed of an enclosed market-place, used as a cattle and pig market, which (with the tolls taken therein) was demised to the appellant for a term of five years. The sole

(*e*) See *R. v. Ferrall* (1875), 1 Q. B. D. 9; 45 L. J. M. C. 29; 33 L. T. 379; 24 W. R. 139, *supra*, p. 170.

(*f*) (1872), L. R. 7 Q. B. 328; *S. C. sub nom. Casswell v. Overseers of Wolverhampton*, 36 J. P. 645; see p. 322, *infra*.

(*g*) (1871), L. R. 7 Q. B. 333 n.

(*h*) (1881), 51 L. J. M. C. 41; *infra*, p. 323.

(*i*) (1871), L. R. 7 Q. B. 333 n.

(*j*) (1816), 5 M. & S. 221; *supra*, p. 318.

(*k*) (1872), L. R. 7 Q. B. 328.

question raised was whether certain "cattle market tolls" might be taken into account in estimating the yearly value of the occupation of the market-place. The tolls (under the local Act) became due as soon as the cattle were brought into the market-place, and before they were put into any pen or tied up in such market-place. The sale of cattle, except in the cattle market, was prohibited under a penalty. The Queen's Bench held that the tolls were not rateable. COCKBURN, C.J., said (*l*) :

"The distinction between market-tolls and stallage has been long taken and established, though it is in my opinion to be regretted ; for a man who occupies the soil of a market, with the occupation enhanced in value by reason of this toll, ought to be assessed to the rates and contribute to the public local burthens in proportion to the value of his occupation. But we must abide by the distinction founded on this principle of ancient law, and take it as established that tolls payable merely as market tolls for the use of the market are not rateable, whereas the toll paid for the use of a stall which occupies the soil is rateable. The present toll is payable, not for the use of any shed or other thing erected or maintained upon the soil, but independently of anything in the shape of stalls or sheds, simply for admission to the market-place, and it is, therefore, a market toll and comes within the distinction and is not rateable."

BLACKBURN, J., thought the case not distinguishable from *Mayor of London v. St. Sepulchre* (*m*), and said that cattle driven into a market and not stalled did not occupy the soil more than a living person walking into the market and carrying provisions (*n*).

In these judgments, which are founded ultimately on the decision in *R. v. Bell* (*o*), no notice is taken of the fact that the corn tolls in the earlier case were taken in respect of sales in the public highway, on land of which the appellant could in no sense be regarded as the occupier ; whereas in *R. v. Casswell* (*p*), the tolls were taken for admission into an enclosed market, of which the person rated had a lease. It is also to be noticed that the question was not whether the persons paying the tolls occupied the soil ; the fact that they did not occupy would have been a good answer had the rate been imposed upon them ; but for the reasons already given (*supra*, p. 321), it is submitted that it is no answer when the rate is imposed on the person receiving the toll.

In *Mayor, etc., of London v. Greenwich Union* (*q*), the Corporation of London, as the local authority, under the Contagious Diseases (Animals) Acts, built a cattle market at Deptford for the reception

(*l*) L. R. 7 Q. B., at p. 331.

(*m*) (1871), L. R. 7 Q. B. 333 n.

(*n*) See *Mayor, etc., of Yarmouth v. Groom* (1862), 32 L. J. Ex. 74 ; *infra*, p. 325.

(*o*) (1816), 5 M. & S. 221 ; *supra*, p. 318.

(*p*) (1872), L. R. 7 Q. B. 328.

(*q*) (1883), 48 L. T. 437. Cf. *Mersey Docks v. Birkenhead*, [1901] A. C. 175 ; *supra*, p. 167.

of foreign animals, and were the owners and occupiers of the market, with wharves, landing-stages, etc. By byelaws made under the Acts, a fixed charge per head was levied on all animals landed at the market wharf. The charge became due on the animals being landed, and included lairage until the animals were slaughtered. No consignee of any animals had any right to put his animals in any particular part of the market. The Queen's Bench Division held that the charges were rateable. HUDDLESTON, B., said :

"The charges are taken in respect of the occupation by the appellants of the soil, and, therefore, they are rateable. . . . The cases of *The Mayor of London v. St. Sepulchre (r)*, and *R. v. Casswell (s)*, seem to have carried the law beyond the earlier cases. . . . In *Mayor of London v. St. Sepulchre* and *R. v. Casswell* the payment of the tolls was not a condition precedent to the right of entering the market—*i.e.*, not the price of admission; but the right of entry was acknowledged, and it was when that had taken place that the tolls became payable. The question is, are the tolls paid as a condition precedent to the use of the land; if so, the tolls are rateable, because the payees are in occupation of the land either by themselves or their licensees."

In *Percy v. Ashford Union (t)*, the appellant was held rateable in respect of tolls taken for sheep, cattle, horses, and pigs admitted into an enclosed market (the property of a market company formed under a local Act), of which the appellant was lessee. The case, however, does little more than decide that, the tolls being *prima facie* incidental to the occupation of the soil, the appellant had failed in his attempt to show that they were payable under a charter of Charles II.

Rating of tolls in Covent Garden market.—These tolls were dependent originally on a charter granted by Charles II., and were subsequently regulated by local Acts. The nature of the tolls was considered in *Duke of Bedford v. Emmett (u)*, which was an action brought to recover tolls: it was held that a local Act (53 Geo. 3, c. lxxi.) having made the tolls payable not by the buyer, but by the seller (or the person offering the goods for sale), the tolls were in the nature of stallage and piccage, and were not mere market tolls which are payable by the buyer only (*v*). In *Duke of Bedford v. St. Paul's, Covent Garden (y)*, the rateability of the tolls was fully discussed. The tolls were fixed by statute, 9 Geo. 4, c. exiii., which divided the then existing market into

(*r*) (1871), L. R. 7 Q. B. 333 n.

(*s*) (1872), L. R. 7 Q. B. 328.

(*t*) (1876), 34 L. T. 579.

(*u*) (1820), 3 B. & Ald. 366: see also *Prince v. Lewis* (1826), 5 B. & C. 363.

(*v*) See p. 317, *supra*.

(*y*) (1881), 51 L. J. M. C. 41; Ryde's Met. Rat. App. 513.

parts (each of which was appropriated to a specific purpose), distinguished as "the yearly cart stands," "the casual cart stands," "the fruit market," "the flower stands," etc. By s. 21 of the Act, "the Duke of Bedford, his heirs or assigns, being owners of the said market," are authorised "to demand and take . . . of and from every person who shall hold, use, or occupy any stand the rent or sum of money mentioned or specified with respect to such stand in the schedule to the Act, and of and from every person who shall place, pitch, expose for sale, or sell within the said market any fruit, flowers, vegetables, roots, or herbs on each and every day on which the same shall be so placed, pitched, or exposed for sale or sold, the tolls or sums of money mentioned in the schedule." The appellant admitted that he was rateable in respect of rents received (by the name of rent) for shops and offices, and certain stands : but the Queen's Bench held that he was rateable in respect of all. BOWEN, L.J., in giving judgment, said (z) :

"The case at common law would stand thus : The market would be a definite place created by the king's grant for the purpose of selling goods or chattels. The market, unless anything else is said in the king's grant, is free from toll. It was in the king's power to grant a reasonable toll to the lord of the market. For what ? Why in respect of the convenience he supplied for the witnessing of contracts made in the market. For, be it remembered, a market was a very important place. It was a place in which a sale changed the property, not merely as between the parties, but as against all persons in the world, and a witness of a sale in market overt was of importance to the public, and to the parties concerned in the transaction. Accordingly an officer appointed by the lord took his fee. . . . But besides this toll which my learned brothers have called a franchise toll, there was another kind of toll which might be payable to the lord. It was a toll payable for or in respect not merely of some user of the soil (because it may be said that in one way everybody who goes into a market uses the soil), but in respect of some user of the soil beyond the mere entry to the market which was enjoyed in common by all the rest of the public. . . . Stallage and picage or the like is the second kind of toll, and we have really to consider whether the toll in question is a mere toll payable upon the sale of goods within the market, or a toll for the bringing of goods within the market as by certain ancient custom in special markets ; or whether, on the other hand, these sums of money, be they called in the Act of Parliament rents or what not, are in effect payments directed by statute in respect of some use of the soil beyond that mere use of the market which the rest of the public and other vendors enjoy. The test is occupation or use of the market beyond that which the general public have—some standing room in it distinct from an entrance into it. . . . As soon as the market was to be parcelled out, and was parcelled out into the apportioned areas, both for the convenience of the public and of the sellers, these statutory payments arose and could be collected by the duke. They were no longer the old tolls. They were something different, and new tolls. In respect of what did they arise ?

(z) 51 L. J. M. C., at pp. 45, 46.

They were no longer tolls in respect of the mere entry of goods into the market. They were no longer in respect of the mere sale of goods in the market. They were tolls raised for the sale of goods within appropriated portions of the market, places appropriated to the very sellers of the goods. The sellers had something more than they had before. . . . I see nothing at all unreasonable in supposing that the statute which gave an additional convenience to the seller meant to make the seller pay in respect of that convenience, and if it was a payment in respect of that convenience, and not in respect of the entry into or sale within the market, it seems to me to fall within the class of tolls which enhance the value of the occupation of the soil, and which are, as COKE says, in the like nature with stallage tolls."

The line drawn between *R. v. Casswell (a)* and *Duke of Bedford v. St. Paul's, Covent Garden (b)*, is a very narrow one. In the former case tolls paid for *cattle* brought into an enclosed market occupied by the person rated were held not rateable : in the latter case tolls paid for *goods* brought into a similar market were held rateable, although in *R. v. Casswell* it had been held that there was no difference between tolls paid for cattle and tolls paid for goods. The only real distinction between the two cases is that in *R. v. Casswell* there was no specific appropriation of particular parts of the market to particular classes of cattle (c) ; whereas in the *Covent Garden Case* the market was divided into "the cart stands," "the fruit market," "the flower stands," etc. But if the effect of this division was to substitute for one market, several markets dedicated to the sale of the several kinds of produce, then even this distinction disappears. If *R. v. Casswell* cannot be reconciled with the *Covent Garden Case*, then it is submitted that the former case must be regarded as wrongly decided ; and that it is wrong in extending to an enclosed market occupied by the person rated the principle of *R. v. Bell (d)*, which related to the tolls of a market held on the public highway, of which the person rated was not in occupation.

What amounts to stallage.—In *Mayor, etc., of Yarmouth v. Groom (e)*, which was an action to recover stallage, the court had to decide whether certain payments were of the nature of stallage or not. Persons having stalls or stands in the market, or using the market with "peds," and with or without chairs or seats, had always paid the corporation for so doing. The "ped" is a wooden or wicker basket of the length of four feet, of the width of two and a half feet, and of the height of two feet, with a lid which turns back, and when supported by a stool or pieces of wood not fixed in the soil, forms a table, upon which provisions are exposed for sale.

(a) (1872), L. R. 7 Q. B. 328.

(b) (1881), 51 L. J. M. C. 41 ; Ryde's Met. Rat. App. 313.

(c) Such an appropriation may have existed in fact, but it is not mentioned in the case.

(d) (1816), 5 M. & S. 221 ; *supra*, p. 318.

(e) (1862), 32 L. J. Ex. 74.

One of the defendants used (in addition to the ped), a chair, the chair and ped being protected by a covering supported by four poles shod with iron spikes, and fixed in the soil, upon which poles a wooden frame was placed covered with a tarpaulin. Another defendant used a chair and ped without a tarpaulin covering. The court held the payments in either case to be stallage. MARTIN, B., in the course of his judgment, said :

“ It is perfectly clear *primâ facie* that all persons using these ‘peds’ were understood to use permanently and exclusively a portion of the market, and were to pay for it. But the argument for the defendants is that the use of these ‘peds’ is not the use of a stall. It strikes me that is entirely a question of fact for a jury. I have no doubt that a person carrying commodities into a market to sell, butter for instance in a basket, and using that basket to exhibit it to the customers, and making no other use of the ground, except when tired to place the basket upon it, and nothing done by the person to show an intention to leave it there, but going to another part of the market, that would not be stallage at all. In fact it would be nothing more than a person using the market for hawking wares. It might as well be said if oxen were driven to a market and it were possible to keep them stationary on one spot, that that would be stallage because the animals occupied a space in the market. That would not be so (*f*). But in the present case there was an exclusive occupation of a particular portion of the market by these ‘peds.’ ”

In *R. v. Barnard Castle* (*g*), the appellant was rated in respect of tolls of corn and grain, potatoes and fruit, of which tolls he was the lessee. The lord of the manor was the owner of the soil of the market, and repaired the pavement of it. The tolls were by immemorial custom payable by the persons selling or offering for sale, whether the goods were sold or not. The corn tolls were payable in kind in respect of every bushel sold. The custom was for the seller to set down one sample sack for inspection in the market-place, leaving the bulk in carts, which remained standing in the streets, but within the limits of the market. The tolls for potatoes and fruit were payable in money, a small sum for each cart standing within the limits of the market. It was argued for the appellant that the tolls were similar to those in *R. v. Bell* (*h*) ; but the Queen’s Bench held that the tolls were in the nature of stallage, and that the appellant was rateable in respect of them (*i*).

Who is rateable for stallage and piccage.—Another point may be noticed with reference to the judgment of COLERIDGE, J., in

(*f*) This part of the judgment was approved by BLACKBURN, J., in *R. v. Casswell* (1872), L. R. 7 Q. B. 328 ; *supra*, p. 322.

(*g*) (1863), 27 J. P. 534.

(*h*) (1816), 5 M. & S. 221 : *vide supra*, p. 318.

(*i*) *Cf. R. v. St. Peter, Mancroft, Norwich* (1828), 6 L. J. (o.s.) M. C. 69.

Roberts v. Overseers of Aylesbury (*k*). For the sake of brevity, it is the custom to use the expression that “stallage tolls are rateable”; but the more correct form of expression is that “the person receiving stallage tolls is rateable in respect of such tolls”; for in strictness it is not the property which is rated, but the person is rated in respect of the property. When it is said that stallage is rateable, what is meant is that the lord of the market (or his lessee), who may be regarded as having the permanent occupation of the market, is rateable in respect of the value of that occupation; and it is not meant that the payment of stallage and the use of a stall amounts to an occupation for which the person using the stall can be rated.

In *Spear v. Bodmin Union* (*l*), the appellant rented two stalls in a market year by year, and used them on market days. The stalls were movable and were occasionally moved, and the appellant was not entitled to the use of the same stall or of exactly the same spot of ground throughout the year; but he was entitled, and, in fact, obtained, the same relative position in the row of movable stalls. It was held that the appellant had not an exclusive occupation of any defined portion of ground within 43 Eliz. c. 2, and was therefore not rateable. This decision confirms *Holledge's Case* (*m*).

Lighthouse tolls or dues.—Lighthouses occupied by any of the general lighthouse authorities or the Board of Trade are now specially exempt by statute (*n*). The lighthouses in the hands of other public bodies cannot now be said to be exempt on the ground that they are used for “public purposes” (*o*). The earliest case relating to lighthouse tolls or dues appears to be *R. v. Rebowe* (*p*), decided on the following facts: King Charles granted by patent to the defendant's predecessor in title liberty to erect lighthouses at Harwich; and, towards the maintenance of them, certain tolls and duties payable by all ships coming into that harbour. Only part of the tolls were received at the port of Harwich, the rest at many different ports in the kingdom. There was no other advantage arising from the lighthouses. The defendant Rebowe occupied the lighthouses by two men kept in his pay to light and attend the lamps, but did not himself reside in the parish, and therefore was not rateable as an “inhabitant” (*q*). The sessions held Rebowe rateable in respect of the lighthouses and the duties; but Lord MANSFIELD said:

(*k*) (1853), 1 E. & B. 423; *supra*, p. 318.

(*l*) (1880), 49 L. J. M. C. 69.

(*m*) (1620), 2 Rolle's Rep. 238; 1 Const. 123; *supra*, p. 319, note (*t*).

(*n*) *Vide supra*, p. 121.

(*o*) *Vide supra*, pp. 130—134.

(*p*) (1772), Cald. 155, 351; 1 Const. 142.

(*q*) As to the liability of an inhabitant to be rated for tolls, see p. 308, *supra*.

"They have, properly speaking, rated the fire and the profits arising from the house : the pantheon, play-house, and other places of public amusement are rated I suppose, but not for their profits."

After taking time to consider, Lord MANSFIELD gave judgment thus :

"We are all of opinion that Mr. Rebowe ought not to be rated for the tolls. This property is not in the parish. They have not rated the house, but they have rated the tolls. The tolls are not locally situated in the parish, and therefore not rateable there."

In the next case, *R. v. Tynemouth* (*r*), a Mr. Fowke had been rated for certain tolls payable in respect of a lighthouse in the township of Tynemouth. The tolls were payable upon ships sailing in the German Ocean, and receiving the benefit of the lighthouse ; and the ships from which the tolls arose never came within the township of Tynemouth. The tolls were not paid in the township, but were collected at Newcastle and other ports. Neither Mr. Fowke nor any of the receivers of the tolls resided in the township of Tynemouth ; he was not, therefore, liable to be rated as an "inhabitant." The Queen's Bench held the dues not rateable. Lord ELLENBOROUGH, C.J., said :

"It is no question now whether this property could be rated in some other way—as if the lighthouse, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent—but this is a rate specially upon the tolls, and therefore the case is not distinguishable from *R. v. Rebowe* (*s*), which is so immediately in specie, and in all its circumstances the same, and has been so long considered and acted upon as law, that it concludes the question. What local property is there within the township on which this rate on the tolls can be levied ? The tolls are not received there, nor do the ships from which they are collected come within the township : the subject-matter of the rate has no locality within this township" (*t*).

It will be seen presently that the first words of this judgment contain really the answer to the problem we are now discussing. If the latter part of the judgment means that no person can be rated at a value enhanced by reason of profits received outside the parish for which the rate is made, then it can no longer be regarded as good law (*u*) ; but if it can be regarded as laying down the rule that in order to make a person rateable as an

(*r*) (1810), 12 East, 46.

(*s*) (1772), Cald. 155, 351 ; 1 Const. 142.

(*t*) There was another question raised by the case, viz., whether a servant employed to take care of the light was rateable. As to this point, see p. 21, *supra*.

(*u*) See the cases relating to the rating of canals in Chapter XVII. See also *R. v. New River Co.* (1813), 1 M. & S. 503, *supra*, p. 268.

occupier (and not merely as an *inhabitant*) he must be in occupation of "local property" within the parish, then the judgment is undoubtedly good law.

Effect of decision that tolls are not rateable per se.—Shortly after the decision of *R. v. Tynemouth* (*x*), it was decided that a person who is not an inhabitant, is not rateable as an occupier in respect of tolls which are detached altogether from real property, and do not result from the use of such property in the parish for which the rate is made (*y*). But, a few years later, another attempt to rate lighthouse tolls was made in *R. v. Coke* (*z*). The facts were almost exactly similar to those in *R. v. Tynemouth*. All the dues (which were payable by all ships passing the lighthouse) were collected outside the parish, and none of the ships paying the dues came within the parish. The appellant, Mr. Coke, did not reside in the parish, nor occupy any property there other than the lighthouse. The annual value of the lighthouse, independently of the dues, was found to be 4*l*. The rate was made on the appellant as "the occupier of the lighthouse with the duties or contribution money in respect of ships, hoys, and barks passing by the same," the annual value being put at 2,250*l*., which was the amount of the duties, over and above the expense of keeping up the lighthouse and lights. The Queen's Bench held that the tolls were not to be taken into account, and reduced the appellant's assessment to 4*l*. BAYLEY, J., in giving judgment, said (*a*) :

"The proprietor of the lighthouse in this case is at liberty, either in that house, or in any other which he may think fit to erect or to rent, to burn lamps and to produce a stream of light which shall be visible at a considerable distance at sea. But even if by the terms of the letters patent it were imperative on the grantee to burn his lights within this particular lighthouse, still if the privilege is not given to him by reason of his being the occupier of that house, it would not be appurtenant to but distinct from the house where it was to be exercised, and the duties payable to him in respect of the light would be profits arising from the exercise of that privilege, and not from the house or land where it happens to be exercised. The grantee would, in that case, have an exclusive privilege of carrying on in that particular house (if I may so express myself) a particular description of trade, but there would be no necessary connection between the freehold interest in that house and the light which is to be kept in it. The apparatus which is to contain or produce the light may, or may not be, attached to the freehold. . . . If it be once ascertained that the tolls and duties, *quâ* tolls and duties, are not rateable, then although the business must be carried on in a house, or even in this specific house, a distinction

(*x*) (1810), 12 East, 46.

(*y*) See *R. v. Nicholson* (1810), 12 East, 330; *Williams v. Jones* (1810), 12 East, 346; *supra*, p. 309.

(*z*) (1826), 5 B. & C. 797.

(*a*) 5 B. & C., at p. 807.

must be taken between the value of the house in which that particular trade (for I consider it a species of trade) is carried on, and the profit arising from the trade itself" (*b*).

In the same year in which *R. v. Coke* (*c*) was decided, the court decided *R. v. Fowke* (*d*), a case relating to the same tolls which had been held not rateable in *R. v. Tynemouth* (*e*); and an attempt was made to reverse the earlier decision. It was stated in the case that a few of the ships paying the toll came within the parish of Tynemouth, for which the rate was made, but that the tolls received in respect of such ships did not equal the expense of maintaining the light, and managing the lighthouse. The case further found that "if the lighthouse should be let by the appellant, Mr. Fowke, without the tolls, it would be worth 6*l.* a year to be rented by a third person; if let together with the tolls, it would be worth 500*l.* a year to be rented by a third person" (*f*). The court held that the dues did not arise from the building, nor from anything of necessity connected with it, and that the case was undistinguishable from *R. v. Coke* (*g*); and they reduced the assessment to 6*l.*

Tolls, though not rateable, may yet be taken into account.—The proposition that lighthouse tolls are not rateable *per se* is still good law: and if *R. v. Coke* (*h*) can be regarded as merely laying down that proposition it can still be relied on. But the passages quoted above from the judgment of BAYLEY, J., seem to go further, and to decide that the tolls (not being part of the profits of the land) ought not to be taken into account at all, and that the land must be valued as though the tolls did not exist (*i*). It is not necessary to consider whether this part of the judgment correctly stated the law as it stood in 1826; but reference must now be made to the definition of "net annual value," in s. 1 of the Parochial Assessments Act, 1836 (*k*). The Act did not make any property rateable which before was not rateable: so that, if lighthouse tolls were not rateable before the Act was passed, they are still not rateable. But lighthouses (*l*) have always been rateable

(*b*) See the remarks on this judgment in the next paragraph.

(*c*) (1826), 5 B. & C. 797.

(*d*) (1826), 5 B. & C. 814 n.

(*e*) (1810), 12 East, 46; *supra*, p. 328.

(*f*) It may be noticed that the sessions did not apparently consider what rent Mr. Fowke himself (the person entitled to the tolls) would have been willing to pay for the lighthouse: in other words, they failed to take into account the actual occupier as one of the possible "hypothetical tenants." If so, they were wrong: see *R. v. School Board for London* (1886), 17 Q. B. D. 738; *supra*, pp. 154, 155.

(*g*) (1826), 5 B. & C. 797.

(*h*) (1826), 5 B. & C. 797; *supra*.

(*i*) Such a decision is inconsistent with *R. v. North and South Shields Ferry Co.* (1852), 1 E. & B. 140; *supra*, p. 311.

(*k*) 6 & 7 Will. 4, c. 96, set out in Appendix II.

(*l*) With the exception of lighthouses occupied by any of the general lighthouse authorities or the Board of Trade which are made specially exempt by statute: *supra*, p. 121.

as "land," and the Parochial Assessments Act, 1836, has defined the basis on which the rateable value of land must now be ascertained, viz., by an estimate of the rent which a tenant may reasonably be expected to pay. In making that estimate, all possible tenants must be taken into account, including the actual occupier (*m*). The Act does not inquire into the motive of the tenant, and if the actual occupier or any other tenant would be willing to give a high rent for the lighthouse in order to earn the lighthouse tolls, that rent must be taken into account in estimating the rateable value, even though the motive of the tenant be to earn tolls which are not in themselves rateable. The argument on the part of the occupier cannot be put higher than this,—that the tolls are not more rateable than are the profits of trade (*n*). This may be conceded: yet, though the profits of trade as such cannot be rated, "if the ability to carry on a gainful trade upon the land adds to the value of the land, that value cannot be excluded merely because it is referable to the trade" (*o*). The ability to carry on a gainful trade adds to the value of a particular piece of land, when that land gives special facilities for carrying on the trade, not provided by other land: and for this reason, in rating public-houses, the existence of the license is taken into account (*p*). The instance given by BLACKBURN, J., in *R. v. London and North Western Rail. Co.* (*q*), is appropriate:

"Chambers in one of the Inns of Court are let at a higher rent than they would fetch elsewhere because they give facilities to gentlemen to carry on the profession of barristers. And if the Attorney-General could only get one set of chambers to carry on his business he would give probably an enormous rent for them; but it so happens that there are a great many sets of chambers, and the rent the Attorney-General gives is just the same as that given for a similar set by a gentleman only called yesterday."

Method of calculating rateable value of a lighthouse.—The illustration given in the last paragraph suggests the test to be applied in rating lighthouses. The owner of the franchise, entitled to the tolls, will not give as great a rent as the amount of the tolls would enable him to pay, if he can get an equally suitable site for his lighthouse at a lower rent: for if the hypothetical landlord of the lighthouse were to attempt to extort a full rent calculated with reference to the profits of the tolls, the owner of the franchise would purchase another site for his lighthouse, or would contract with another

(*m*) *R. v. School Board for London* (1886), 17 Q. B. D. 738: Ryde's Rat. App. (1886—1890), 235; *supra*, p. 154.

(*n*) See the judgment of BAYLEY, J., in *R. v. Coke* (1826), 5 B. & C., at p. 808; *supra*, p. 329.

(*o*) See the judgment of Lord DENMAN, C.J., in *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at p. 38; cited, *supra*, p. 191.

(*p*) See Chapter XXIV., *infra*, p. 451.

(*q*) (1874), L. R. 9 Q. B. 134; *supra*, p. 168.

landlord to pay a rent which would probably be equivalent to the value of the land for other purposes, together with a reasonable rate of interest on the cost of constructing the necessary buildings. If it could be shown that one site only was available for a lighthouse, then the owner of the franchise would probably give "an enormous rent" for it, just as (to adopt the illustration given by BLACKBURN, J.) the Attorney-General, if he could only get one set of chambers to carry on his business, would probably give an enormous rent for them. But if it so happens that there are a great many sites available for a lighthouse, then the owner of the franchise will give no greater (or very little greater) rent for the land than any other person who wants it.

As under the Parochial Assessments Act, 1836, s. 1, rateable value depends on an estimate of the rent which may be expected, all that could reasonably affect the mind of the intending tenant ought to be considered (*r*); and it is not now permissible, if it ever was, to draw the distinction which BAYLEY, J., drew in *R. v. Coke* (*s*), between profits of the land and profits of the trade carried on upon the land, if the distinction is drawn in order to shut out of consideration the profits of trade. This appears from the judgment of Lord DENMAN, C.J., in *R. v. Grand Junction Rail Co.* (*t*).

In the case of a lighthouse, where tolls can be earned, the rateable value is measured by the rent which may be expected, and the rent is regulated by that which the tenancy gives the tenant the means of doing or enjoying. If one site gives greater facility than other sites for exhibiting a light and earning tolls, the person entitled to the tolls will probably give more for the suitable site than any other tenant: but if there are many such suitable sites, he will probably not give much more than other tenants, because the landlords of the several sites will be competing with each other to secure the owner of the tolls as a tenant, and this competition will keep down the rent. If, however, there is only one site available for a lighthouse, the landlord of that site can raise the rent to as great an amount as the tenant can afford to pay, leaving him only a sufficient profit out of the tolls to induce him to become a tenant liable to pay that rent.

What is stated above appears to be supported by *Commissioners of Port of Lancaster v. Barrow-in-Furness* (*u*). In that case the overseers had rated the commissioners for their lighthouse at 2,670*l.*, by deducting from the dues received the expenses of working, maintenance, etc., and contended that the dues were

(*r*) *Per* Lord HALSBURY, L.C.; *Cartwright v. Scolcoates Union*, [1899] 1 Q. B. 667, at p. 673; *supra*, p. 165.

(*s*) (1826), 5 B. & C., at p. 808; *supra*, pp. 329, 330.

(*t*) (1844), 4 Q. B. 18, at p. 40; *supra*, p. 191.

(*u*) [1897] 1 Q. B. 166.

rateable. But the sessions held that the dues ought not to be taken into account, and that the lighthouse should be rated on its structural value, and reduced the rateable value to 62*l*. The case specially found that the "commissioners are not compelled to exhibit any light from this particular lighthouse nor upon the particular piece of land, but can exhibit a light and earn the dues on any part of Walney Island, or if they so desire outside the parish of Barrow-in-Furness." To contend, on these facts, that the dues were rateable was, as GRANTHAM, J., pointed out, equivalent to a contention "that because a tenant or occupier makes or receives so much a year out of his business, therefore he would give that sum or a distinct part of that sum, for the premises in which he carries on his business, irrespective of their cost or of their value." And the sessions were held to be right in rating the lighthouse on its structural value, that being the only practicable principle on which the valuation could be based.

It seems clear that structural value in this particular case was the proper basis, assuming the facts to be correctly stated in the case. If the commissioners were asked to pay a rent of 2,670*l*., they would say, "We can take another piece of land and erect for ourselves (or pay our landlord for erecting) an equally suitable lighthouse, the rent for which (calculated on the structural value) would be 62*l*. ; there is no need to pay a rent of 2,670*l*."

Since the above decision was given, another attempt has been recently made by the rating authorities to increase the assessment of the same lighthouse. Evidence was given at quarter sessions to show that the site of the lighthouse could be moved a short distance (if at all), and then only to other land belonging to the same landowner. But the sessions again reduced the rateable value to 62*l*., and refused a case for the High Court (*x*).

It is submitted that (whatever view be taken of the decision of the sessions) if the facts of which evidence was given were proved, the question arising on these facts was not covered by the previous decision of the Queen's Bench Division, which was given on a special case which stated very different facts.

(*x*) The decision was given on October 15th, 1903, and is not yet reported ; the writer is indebted to the counsel for the respondents for the above information.

CHAPTER XVII.

CANALS AND NAVIGABLE RIVERS.

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Canal tolls.—It will be convenient to consider together the rating of canals proper, and of rivers which (by means of dredging, and the construction of weirs, locks, towing-paths, etc.) have been rendered navigable. So much of the law relating to railways depends on the cases relating to the canals for which they were substituted, and so great a revolution took place in the rating of canals shortly after 1810 (*a*), that it is desirable to note carefully the history of the law.

Down to about 1810 (*a*), it appears to have been assumed that canal tolls were rateable *per se*, and the question discussed in most of the cases was,—in what parish were the tolls to be rated? The judges answered this question by saying that the tolls were to be rated, not where they were received (for the place of receipt might depend on accidental circumstances, or the arbitrary will of the owner), but where they became due; and that the tolls became due at the end of the voyage, in respect of which the tolls were payable (*b*), or where the tolls were payable for passing a lock, at that lock (*c*). The result of holding that canal tolls were rateable only in the parish where the voyage ended, in the case of a canal connecting two large towns, was to increase the rateable value in the parishes in which the termini of the canal lay, and to diminish

(*a*) The date of the decision of *R. v. Nicholson*, 12 East, 330; *vide supra*, p. 309.

(*b*) *R. v. Aire and Calder* (1788), 2 T. R. 660; *R. v. Page* (1792), 4 T. R. 543; *R. v. Staffordshire and Worcestershire Canal Co.* (1799), 8 T. R. 340.

(*c*) *R. v. Cardington* (1777), 2 Cowp. 581.

(or even destroy) the rateable value in the intervening parishes. Some doubt was thrown on the soundness of the principle by the decision in *R. v. Leeds and Liverpool Canal Co. (d)*. In that case tolls were payable for goods carried along two different lines of canal (connected and worked together), one of which was by statute exempt (*e*) from being rated in respect of the tolls, while the other was not. It was held that, as to tolls due in respect of a voyage ending on the line which was not exempt, the canal company were to be rated only for the proportion of the tolls accruing along the line which was not exempt. This decision is not easily reconciled with the principle that (apart from exemptions) tolls accruing in respect of a canal running through several parishes are rateable in their entirety in that parish in which the voyage ends; and the decision also involves the anomaly that an exemption given to land in one parish may have its effect in another parish. But a contrary decision would have deprived the canal company, wholly or in part, of the benefit of their statutory exemption. Six years later it was decided in *R. v. Nicholson (f)* that tolls *per se* are not rateable, and can be rated only when connected with land, or arising from the use of land, lying within the parish for which the rate is made. On the day on which *R. v. Nicholson* was decided, but apparently after the decision had been given, the same court decided *R. v. Macdonald (g)*, in which the appellants were rated in respect of the "Rochdale Canal Lock, Tunnel, Dues or Rates"; the latter being paid in respect of all vessels passing through the lock. The court held that the appellants were properly rated for the dues or rates, because they were profits of the lock, which was something real and substantial, and locally situated in the township for which the rate was made; and that the addition (in the rate) of "Dues or Rates" was merely giving other names for the same thing. And the court in so deciding expressly held that tolls *per se* were not rateable.

The effect of these decisions was to reverse the rule that canal tolls could be rated only in the parish in which the voyage ended for which they became due, and to make them (in effect) rateable in every parish in which the tolls were earned (*h*); and, the tolls being rateable in more than one parish, it thereupon became necessary to apportion the value between the several parishes (*i*).

(d) (1804), 5 East, 324.

(e) Several cases on the effect of special exemptions of canals under local Acts are considered *supra*, pp. 118—121.

(f) (1810), 12 East, 330: *vide supra*, p. 309.

(g) (1810), 12 East, 324. Both the argument and the judgment seem to refer to the decision in *R. v. Nicholson*. The word "tunnel," it is suggested, is a misprint for "tonnage."

(h) *Vide infra*, p. 340.

(i) *Vide infra*, p. 341.

Distinction between canals and navigable rivers.—A preliminary point arises where the tolls are paid for passing along a natural river, which has been improved or rendered navigable by the persons entitled to the tolls. For the tolls being rateable (if at all) only as profits of “land,” it becomes necessary to inquire whether the persons rated are occupiers of land or not, since it is only as occupiers that they can be rated.

In the case of an artificial canal (or cut) the land for the canal and towing-paths was almost invariably purchased by the navigation company, and the adjoining towing-paths were in some cases fenced off from the adjoining land; and for such canals and towing-paths the navigation company were always held rateable, the acts of user by the company, over land of which they were themselves owners, being held sufficient to constitute them occupiers of the canal and towing-paths: but for the bed of a natural river, and for the towing-paths alongside of it, the navigation company were held not rateable, unless the soil of the river and of the towing-paths were vested in them (*k*). It was also held that a navigation company might be rated for artificial canals and the towing-paths by the side of them, even though no conveyance was ever executed (*l*).

So, too, in *R. v. Mayor, etc., of London* (*m*), the corporation of London were held rateable for a towing-path in Hampton Wick by the side of the River Thames, because the towing-path had been purchased by and conveyed to the corporation, although the bed of the river itself was not vested in them. Lord KENYON, C.J., said:

“Where there is no actual possession in another person, the possession follows the property. It is not necessary that there should be a manual occupation every day; as in the instance of the waste of a manor, for injuries done to which the lord of the manor may bring trespass” (*n*).

A similar question as to the vesting of a navigation, towing-paths, etc., has arisen in actions of trespass (*o*) or of ejectment (*p*). These cases may sometimes be useful by way of analogy, but it is

(*k*) *R. v. Mersey and Irwell* (1829), 9 B. & C. 95; *R. v. Thomas* (1829), 9 B. & C. 114; *R. v. Aire and Calder* (1829), 9 B. & C. 820; *Bruce v. Willis* (1840), 11 A. & E. 463; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Doncaster Union* (1894), 71 L. T. 585; Ryde's Rat. App. (1891—1893), 318. The earliest reported decision that trustees of a navigation are not rateable for the bed of a natural river which is not vested in them appears to be *R. v. River Weaver Navigation Co.* (1827), which is shortly reported (with a misleading marginal note) in a note to *R. v. Liverpool* (1827), 7 B. & C. 61, at p. 70.

(*l*) *Bruce v. Willis* (1840), 11 A. & E. 463. Cf. *Regent's Canal Co. v. Hendon* (1856), 6 E. & B. 852.

(*m*) (1790), 4 T. R. 21.

(*n*) Compare the cases cited in note (*d*), *supra*, p. 10.

(*o*) *Hollis v. Goldfinch* (1823), 1 B. & C. 205; cf. *Duke of Newcastle v. Clark* (1818), 8 Taunt. 602, and *Dyson v. Collick* (1822), 5 B. & Ald. 600.

(*p*) *Badger v. South Yorkshire Rail. Co.* (1858), 1 E. & E. 347; 28 L. J. Q. B. 118; *R. v. Archbishop of York* (1849), 14 Q. B. 81.

by no means clear that the question in an action of trespass and the question of occupation in a rating case are to be answered in the same way ; and it is possible that a person might be unable (in some circumstances) to maintain an action of trespass to land although he might be liable to be rated as the occupier of that land.

Rating of weir in a river.—In consequence of the decision (given in 1829) in *R. v. Aire and Calder* (*q*) that the proprietors of the “ navigation ” were not rateable for the natural river bed, because it was not vested in them, another attempt was made two years later to rate the same proprietors in respect of a dam which held up the water in the river Aire, and rendered it navigable. The dam was vested in the proprietors, and was repaired by them. But the King’s Bench held (*r*) that to rate the dam would be equivalent to rating the water which the dam held up ; and that as the water could not be rated neither could the dam.

The decision appears to be of very doubtful authority. It is in conflict with *R. v. Cardington* (*s*), in which the proprietor of the navigation of the river Ouse was held rateable in respect of tolls paid for passing a sluice, which was constructed across the natural river ; and *R. v. Nicholson* (*t*), which decided that tolls *per se* were not rateable, recognised the authority of *R. v. Cardington* as giving an example of the rule that tolls arising from the use of land are rateable as part of the land. Again, the ground of the decision in the first case of *R. v. Aire and Calder* (*u*) was that the proprietors of the navigation were not in occupation of the bed of the river, and had no interest in the soil, but a mere easement ; but the dam in the second case of *R. v. Aire and Calder* (*x*) was stated to be vested in trustees for the proprietors of the navigation in fee. Further, it is submitted that the second case of *R. v. Aire and Calder* is wrong on general principles. The proprietors of a tramway are rateable as occupiers of land by means of rails. If, instead of laying down rails in the highway, the proprietors were to earn the same profits by running a line of omnibuses over the surface of the highway, they would not be in occupation of the highways, and therefore would not be rateable in respect of the highways ; but they would be rateable for the buildings used for housing the omnibuses and horses, and if there were *only one* set of buildings available for the purpose, they would be willing to give a large rent for such buildings. In rating such buildings, the rent which they would pay could not be excluded from

(*q*) (1829), 9 B. & C. 820 ; *supra*, p. 336.

(*r*) *R. v. Aire and Calder* (1832), 3 B. & Ad. 139.

(*s*) (1777), 2 Cowp. 581.

(*t*) (1810), 12 East, 330 ; *supra*, p. 309.

(*u*) (1829), 9 B. & C. 820 ; *supra*, p. 336.

(*x*) (1832), 3 B. & Ad. 139.

consideration merely because it was paid in order to earn profits which were not in themselves rateable. And, assuming the proprietors of the navigation to be occupiers of the dam, they cannot be held altogether exempt merely because the tolls (which the occupation of the dam enables them to earn) are earned on a river of which they are not in occupation.

Tolls for passing through locks.—In the early case of *R. v. Cardington* (y), it was held that the owner of tolls paid for passing a sluice (in a natural river made navigable by means of such sluices) was rateable in the parish in which the sluice was situated for all the tolls. It was subsequently decided that tolls *per se* could not be rated, but that they could be rated indirectly as constituting part of the profits of the land (z); and that mileage tolls were to be rated in every parish in which the tolls were earned (a). In *R. v. Lower Mitton* (b), it was contended that separate dues paid (in addition to mileage tolls) by vessels passing through two locks, forming the communication between the river Severn and a canal, should be divided amongst all the parishes through which the canal ran, on the ground that the canal contributed to earn the profits produced at the locks. But the Queen's Bench held that the lock dues must be rated only in the parish in which the locks were situated. BAYLEY, J., said :

"We are of opinion, that there is no distinction as to the principle of its rateability between a lock and a portion of a canal or river navigation; and that, whether the subject-matter of the occupation be productive of itself, or rendered productive by something brought from another parish, or by being used in conjunction with property in another parish, no difference is to be made in the mode of rating. Thus, whether the water in a canal be brought from the same parish or another parish, whether conveyed in pipes or carts or by engines, makes no difference, if the land in which it is placed be thereby rendered more valuable. It makes no difference whether it remains comparatively still as in a canal, or moves constantly as in a river, or occasionally as in a lock, nor does it make any difference that, unless there was a canal in another parish connected with the lock, no profit would be gained. It might as well be contended that the profits of a bridge which would not arise unless there were roads to it, or of land rendered more valuable by roads in an adjoining parish, should be rated in part only in the parish in which such bridge or land is situate" (c).

(y) (1777), 2 Cowp. 581. Although this case was approved in *R. v. Nicholson* (cited below), it is very difficult to reconcile it with a later case, *R. v. Aire and Calder* (1832), 3 B. & Ad. 139. It is submitted that if the cases cannot be reconciled, *R. v. Cardington* should be followed rather than *R. v. Aire and Calder*: *vide supra*, p. 337.

(z) See *R. v. Macdonald* and *R. v. Nicholson* (1810), 12 East, 324, 330, *supra*, pp. 335, 309.

(a) See *R. v. Milton* (1819), 3 B. & Ald. 112; *R. v. Palmer* (1823), 1 B. & C. 546, *infra*, p. 340.

(b) (1829), 9 B. & C. 810.

(c) *Cf. R. v. Hammersmith Bridge Co.* (1849), 15 Q. B. 369, *supra*, p. 316.

In *R. v. Aire and Calder (d)*, the owners of certain mills in the parish of Hunslet were by Act of Parliament entitled to tolls for all ships passing a lock in another parish, as compensation for loss of water caused by the navigation, and they were rated in Hunslet for the tolls. Lord TENTERDEN, C.J., said :

“The rate cannot be supported. The toll itself is clearly not a subject of rate, and if it were it does not arise in Hunslet. Then can the owners of these mills be rated in respect of the toll, as a compensation paid to them for their loss of water? They might have let the mills, reserving the toll to themselves; and if they had done so, could they have been rated on account of the toll? It appears to us that they cannot, in respect of this compensation, be considered as occupiers of any property in Hunslet producing a profit there. Suppose that instead of the toll an annual rent had been given, or a sum in gross from which they derived an income. Could they have been rated in respect of that, as profit arising from their property in Hunslet?”

This judgment marks the distinction which must be drawn in considering whether a payment to a person who is both owner and occupier, must be taken into account in ascertaining the rateable value of his property. If the payment is one which any occupier would receive as a necessary adjunct to his occupation, then the payment must be taken into account as enhancing the rateable value. But if the payment is of such a kind that, when the owner and the occupier are different persons, it belongs to the owner and not to the occupier, then it cannot be regarded as enhancing the rateable value; for the tenant would not be willing to give a higher rent on account of a payment made to his landlord (*e*).

The measure of the rateable value of canals.—As is stated in Chapter XL., *supra*, p. 118, special Acts have in many cases conferred on canals a total or partial exemption from rating. But where no such exemption applies, land taken for a canal is rateable, not according to the value of the land when it was taken for the purposes of the canal, but according to that value which it has acquired from its having been used for the purposes of the canal (*f*). Its rateable value as a canal, since the passing of the Parochial Assessments Act, 1836, must be estimated by reference to the rent which a yearly tenant may be expected to give. But even before the passing of that Act, the same measure of value was applied, and it was held that the owners of a canal must be rated, not on the full amount of the net profits, but on the amount which

(*d*) (1832), 3 B. & Ad. 533. With this case compare *R. v. Woking* (1835), 4 A. & E. 40, and the remarks thereon, *infra*, p. 345.

(*e*) *Cf. R. v. Fletton* (1861), 30 L. J. M. C. 89; 3 E. & E. 450, *supra*, p. 241; *Shropshire Union Rail. Co. v. Lapley* (1868), 32 J. P. 791, *supra*, p. 216; *Newmarket Rail. Co. v. St. Andrews, Cambridge* (1854), 3 E. & B. 94, *supra*, p. 214.

(*f*) *R. v. St. Peter the Great, Worcester* (1826), 5 B. & C. 473.

a tenant would give (*g*). In other words, a deduction for tenant's profits was allowed (*h*).

In *R. v. Chaplin* (*i*), the proprietors of a canal, in the year before the making of the rate under appeal, granted a lease of it, the lessee paying no rent to the lessors, but paying the interest on a mortgage-debt incurred by the lessors. It was held that the payment of interest was in effect a payment of rent, and that it was the best criterion of value.

In what parish canal tolls must be rated.—The first reported case on the subject subsequent to *R. v. Macdonald* and *R. v. Nicholson* (*k*), appears to be *R. v. Milton* (*l*). In that case, the appellant was rated in one parish for the whole of the "tonnage dues" payable in respect of a canal running through several parishes: it was held that the dues could be rated as part of the profits of the land (*m*), but could be so rated only in the parish in which the land lay, and therefore that the rate appealed against was wrong. This decision was clearly inconsistent with *R. v. Aire and Calder* (*n*), *R. v. Page* (*o*), and *R. v. Staffordshire and Worcestershire Canal Co.* (*p*); and it was confirmed in *R. v. Palmer* (*q*), which finally overruled those three cases. ABBOTT, C.J., in giving judgment in *R. v. Palmer*, said:

"It must be recollected that when those cases [*R. v. Page*, *R. v. Aire and Calder*, and *R. v. Staffordshire and Worcestershire Canal Co.*] came before the court, it had not been decided that tolls *per se* were not rateable. That is now fully established by the case of *R. v. Nicholson* (*r*). The proprietors of a navigation are therefore rateable only as the occupiers of the canal, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there situate, and so used for the canal. The true principle of rateability is this: the land is to be rated to the relief of the

(*g*) See *R. v. Oxford Canal Co.* (1825), 4 B. & C. 74; *R. v. Trustees of Duke of Bridgewater* (1829), 9 B. & C. 68; *R. v. Tomlinson* (1829), 9 B. & C. 163; *R. v. Lower Mitton* (1829), 9 B. & C. 810; *R. v. Woking* (1835), 4 A. & E. 40; *cf. R. v. Adames* (1832), 4 B. & Ad. 61.

(*h*) Some additional remarks as to the method of calculating the rent which may be expected for a canal will be found *infra*, p. 344.

(*i*) (1831), 1 B. & Ad. 926.

(*k*) (1810), 12 East, 324, 330: *vide supra*, p. 309.

(*l*) (1819), 3 B. & Ald. 112.

(*m*) On the authority of *R. v. Macdonald*, *supra*.

(*n*) (1788), 2 T. R. 660, *supra*, p. 334.

(*o*) (1792), 4 T. R. 543.

(*p*) (1799), 8 T. R. 340. The effect of this case is clearly misstated in *R. v. Milton*, 3 B. & Ald., at p. 117, by BAYLEY, J., who tries to reconcile it with the judgment he was then giving: the judgment of Lord KENYON, C.J., 8 T. R. at p. 349, shows that this is impossible.

(*q*) (1823), 1 B. & C. 546. A decision to the same effect was given in *R. v. Earl of Portmore* (1823), 1 B. & C. 551: see also *R. v. Trent and Mersey Navigation* (1823), 1 B. & C. 545.

(*r*) (1810), 12 East, 330.

poor in the parish where it is productive of profit (*s*) to the proprietor, and in proportion to that profit, which may be considered as in the nature of a rent received by the proprietor for the use of his land within the parish."

In *R. v. Oxford Canal Co. (t)*, the company were compensated for damage apprehended from the construction of a competing canal, by an Act which substituted for a mileage toll a fixed toll (irrespective of distance travelled on their canal) on goods passing to or from the new canal. It was held that the company were rateable in respect of the "compensation toll," which was to be regarded as earned in every parish along the line of the canal, and was to be rated there.

Apportionment of rateable value among several parishes.—It having been determined that a canal running through several parishes must be rated in all the parishes, there remains the question on what principle is the rateable value to be apportioned to the several parishes. On this point the leading case is *R. v. Kingswinford (u)*; it appears to be the earliest reported case on the subject, and is the foundation of the so-called "parochial principle" which has been very generally, but not universally, applied to the rating of railways as well as canals. In that case it was contended that the whole of the tolls received by a canal company constituted the profits of all the land occupied by the whole line of the canal; and that consequently the company should be rated for that proportion of the entire profits which the land occupied in the parish bore to the whole of the land occupied by the canal. But the Queen's Bench held that the company should be rated in each parish in proportion to the profits earned in the parish, without regard to the area of land occupied (*x*). The great importance of the case renders it desirable to consider the judgment in which BAYLEY, J., said (*y*):

"Tolls, *eo nomine*, are not rateable; but if the subject-matter out of which the tolls arise be one mentioned in the Statute of Elizabeth, as the object of rate, then that may be rated by name, and the tolls which constitute its profits may be thus made to contribute to the relief of the poor. A canal company, therefore, is liable to be rated in respect of the land which they occupy in every parish through which the canal passes, and for that value which the land there produces. The traffic on the canal may be greater in some parishes than others, or the rates may be unequal, and thus

(*s*) The language is not quite accurate; for "productive of profit" the word "valuable" should have been used. Land which is valuable is rateable, even though it be productive of no profit. The point becomes of importance in apportioning the value of a canal among several parishes: see Appendix I., *infra*.

(*t*) (1825), 4 B. & C. 74.

(*u*) (1827), 7 B. & C. 236.

(*x*) The same rule was followed in *R. v. Chaplin* (1831), 1 B. & Ad. 926.

(*y*) 7 B. & C., at pp. 241, 242.

the net profits which constitute the value of the land used for the canal may vary in different parishes. The company ought to be rated in each particular parish in proportion to the profit which they derive from the land there used by them for the purpose of the canal. If a canal runs through six different parishes and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls. But it may happen that in that part of the canal situate in one parish there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in the other parish from the use of the land there. The true principle is this: a canal company is to contribute to the relief of the poor in each parish through which the canal passes in proportion to the profit which they derive from the use of their land in that parish. If the profit arising from a given quantity of land vary in different parishes, the rate must vary in the same proportion."

In considering this judgment it is to be noticed that the court appear to assume, as a fact, that no part of the canal had, or could have, any value for the purposes of the canal company except as being directly productive of profit. This may have been true of the particular canal to which the case related, but it is obvious that it is not necessarily true of all canals, and still more obvious that it is not necessarily true of all railways, to which the decision has been frequently applied. The judgment is based upon the assumption that, because the profit earned by the whole line of canal is the cause, and the measure, of the value of the whole line, therefore the profit earned by the part in each parish is the cause, and the measure, of the value of that part. But it seems clear that this is not necessarily the fact in every case (z).

The principle laid down in *R. v. Kingswinford* (a), has, however, been expressly approved in *R. v. Woking* (b), and has been applied to the rating of railways in *R. v. London and South Western Rail. Co.* (c), in *R. v. Great Western Rail. Co.* (d), and in *R. v. London, Brighton and South Coast Rail. Co.* (e). In *R. v. Great Western Rail. Co.* (f) both parties accepted the principle, and applied it in the same way to the gross receipts, though they may not have followed precisely the method of calculation used in *R. v. Kingswinford*. It must, however, be noticed that some of the more modern railway cases (g) have adopted a principle which is really inconsistent with that laid down in *R. v. Kingswinford*;

(z) The subject is further considered in Appendix I.

(a) (1827), 7 B. & C. 236.

(b) (1835), 4 A. & E. 40, at p. 50.

(c) (1842), 1 Q. B. 558.

(d) (1846), 6 Q. B. 179; 15 L. J. M. C. 80.

(e) (1851), 15 Q. B. 313, see pp. 358—361.

(f) (1852), 15 Q. B. 379, 1085.

(g) These cases are considered *supra*, pp. 212—214.

and the cases cited below, relating to canals, are not quite consistent with it.

Conflict with later decisions as to parochial principle.—In *R. v. Kingswinford* (*h*), the canal company were held to be rateable in proportion to the *net* profits earned in the parish; *i.e.*, in proportion to the gross earnings in the parish minus the expenses in the parish. Two years later, in *R. v. Oxford Canal Co.* (*i*), the court were asked to decide whether, in making a deduction for repairs, a mileage proportion of the cost of repairing the whole length of the canal, or the actual cost of repairs in the particular parish, should be allowed. BAYLEY, J., said (*k*): “The rate is to be in proportion to the value of the land in the parish where the rate is made. Therefore all expenses incurred in repairing that part of the canal in that parish must be allowed.” LITLEDALE, J., added: “The banks in one parish may require more repair than in another, or there may be locks which require frequent repair: so that it may happen that a given part of the canal may yield no profit whatever” (*l*). The remarks here quoted were made during the course of the argument only: they appear, however, to be affirmed by the opening words of the considered judgment of the court (*m*), and they are further supported by the considered judgment of Lord DENMAN, C.J., in *R. v. Woking* (*n*), in which he said: “The necessary repairs and expenses must of course be deducted, and, *as they are found to be equal throughout the line*, the proportion of the parish of Woking is to be ascertained by a mileage calculation.” This implies that where the cost of repairs is not uniform, there must be deducted in each parish the actual cost of repairs in that parish. But this principle was expressly rejected in *R. v. Coventry Canal Co.* (*o*), in which Lord CAMPBELL, C.J., in delivering the judgment of the court, said:

“The expense of maintaining the two locks within the township does not come within the category of local expenses, and ought to be thrown upon the whole line of the canal. This must be considered as one of the points decided in *R. v. Great Western Rail. Co.* (*p*). That was the case of rating a railway; and there the question arose how the expenses of maintaining such works as a tunnel or an inclined plane should be dealt with. The court said: ‘Without these the traffic on either side could have no existence. It would be wrong to set these wholly and exclusively against the receipts earned in

(*h*) (1827), 7 B. & C. 236, *supra*, p. 341.

(*i*) (1829), 10 B. & C. 163.

(*k*) 10 B. & C., at p. 176.

(*l*) This suggests that the court were prepared to follow *R. v. Kingswinford* (1827), 7 B. & C. 236, to its logical conclusion, and to hold that, when profits disappeared rateable value disappeared also; but see *London and North Western Rail. Co. v. Cannock* (1863), 9 L. T. 325, *supra*, p. 213.

(*m*) See 10 B. & C., at p. 177.

(*n*) (1835), 4 A. & E. 40, at p. 51.

(*o*) (1859), 1 E. & E. 572.

(*p*) (1852), 15 Q. B. 379, 1085, *supra*, p. 208. This case was decided after *R. v. Woking*, *supra*.

the same part of the line.' The locks on a canal are, like inclined planes on a railway, to permit a transit where there is a change in the level of the country to be travelled over. If there were an aqueduct created to carry a canal across a valley, the annual expense of repairing it might very possibly be greater than the whole of the gross receipts from the traffic on the canal within the parish where the aqueduct stands. Shall it be said that the canal company is not liable to be rated to the relief of the poor within the parish? If not, the ratepayers are damnified by the canal passing through the parish: for thereby the number of the poor to be relieved may be increased, and the property rateable will certainly be diminished for the land occupied by the canal, which was before rated, would cease to be rateable."

From what has been said in dealing with railways (*q*), it will appear that in the writer's opinion it is impossible to support the decision of Lord CAMPBELL in *R. v. Great Western Rail. Co.* (*r*) and *R. v. Coventry Canal Co.* (*s*), that in rating a railway or canal, the repairs of the rateable hereditament in one parish ought to be spread over all the parishes into which the railway or canal system extends; and, indeed, the decision seems to be in conflict with *London and North Western Rail. Co. v. Harborne* (*t*).

Proof of receipts of a canal company.—The Railway and Canal Traffic Act, 1888 (*u*), by s. 48, provides that on any rating appeal, and before any court where it may be material to show the receipts of a railway or canal company, they may be proved by an affidavit or statutory declaration of an officer of the company. The section has been already considered in dealing with railways (*v*).

Deductions to be made from receipts.—Where the rateable value of a canal is calculated from the profits, there must of course be deducted the working expenses, and the cost of maintenance and repair. The distribution of these expenses among the several parishes through which the canal runs has been already considered (*y*). The poor rate, and the expenses of supplying water to the canal must be deducted (*z*). An allowance must also be made for tenant's profits (*a*). But questions have arisen whether some outgoings (not of the nature of working expenses, or repairs, etc.) are proper deductions from the gross receipts. In *R. v. Woking* (*a*), the proprietors of the River Wey Navigation were by their special Act bound to pay certain tonnage dues to certain landowners (by way of compensation for loss of water, etc.). The

(*q*) *Vide supra*, p. 211.

(*r*) (1852), 15 Q. B. 379, 1085, *supra*, p. 208.

(*s*) (1859), 1 E. & E. 572.

(*t*) (1870), 34 J. P. 644, *supra*, p. 209.

(*z*) See *R. v. Oxford Canal Co.* (1829), 10 B. & C. 163; and (as to poor rate) see also *R. v. Hull Dock Co.* (1824), 3 B. & C. 516, *supra*, p. 126.

(*a*) *R. v. Woking* (1835), 4 A. & E. 40.

(*u*) 51 & 52 Vict. c. 25.

(*v*) *Vide supra*, p. 251.

(*y*) *Vide supra*, p. 343.

proprietors claimed to make deductions for these payments, on the ground that they would cause the property to let at a lower rent : but the court disallowed the deductions. Lord DENMAN, C.J., said (*b*) :

“ These [payments] are payable out of the profits of the canal and are in truth nothing more than rent : they do not affect the value of the occupation, or the rent which a tenant would give, but only show amongst whom and in what proportion the rent, or profits, are to be divided. The poor rates must be paid on the whole of the profits by those who receive them, viz., the proprietors, and they must settle the matter as they can with those who are entitled to share the profits with them.”

This case must be compared with *R. v. Rhymney Rail. Co.* (*c*) which followed it. Had the proprietors of the navigation in *R. v. Woking* paid a lump sum by way of compensation to the landowners, in lieu of the payments required by the special Act, it is obvious that the lump sum so paid could not have been brought into account in calculating the rateable value (*d*). On the other hand, where traders occupy property under a special Act which limits the charges which they can make to the public generally, that restriction on the profit-earning capacity of the undertaking must be taken into account (*e*). If the land to be rated is by statute “ struck with sterility,” or partial sterility, so that its fruitfulness is limited, that must be taken into account ; but if the statute has merely said who shall reap the fruits, leaving the fruitfulness undiminished, it is immaterial whether the occupier reaps the fruits for his own benefit or not (*f*).

With the decision in *R. v. Woking* (*g*), it is useful to compare *R. v. Aire and Calder* (*h*), in which persons receiving tolls payable as compensation for loss of water were held not rateable for such tolls. Each case is the converse of and supplemental to the other.

(*b*) 4 A. & E., at p. 51.

(*c*) (1869), L. R. 4 Q. B. 276, *supra*, p. 248.

(*d*) In *Melbourne Tramway Co. v. Mayor, etc., of Fitzroy*, [1901] A. C. 153, at pp. 169—171, it was held that, in rating a tramway company, no deduction from the receipts could be made in respect of annual payments made to the municipal corporation for the right to work the tramways.

(*e*) *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 592 ; Ryde's Rat. App. (1891—1893) 413, at p. 428, *supra*, p. 172 ; *Sealecoates Union v. Hull Dock Co.*, [1895] A. C. 136, at p. 149, *supra*, p. 240 ; but see the remarks on the latter case, *supra*, pp. 245, 246.

(*f*) See also pp. 246—248, *supra*.

(*g*) (1835), 4 A. & E. 40.

(*h*) (1832), 3 B. & Ad. 533, *supra*, p. 339.

CHAPTER XVIII.

HARBOURS, DOCKS, AND WHARVES.

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Preliminary.—Before the decision of *Jones v. Mersey Docks* (a), it might be contended that harbours or docks occupied by special commissioners, or local authorities, were not rateable on the ground that they were occupied for “public purposes.” This contention is no longer possible, but exemption, or partial exemption, may still be claimed in some cases on the ground that the harbour, or dock, which is rated is not within the parish for which the rate is made, or within any parish at all. The further questions which may arise are in respect of what tolls or dues can the occupiers of the harbour or dock be rated? and, where the harbour or dock extends into several parishes, on what principle is the rateable value to be apportioned among those parishes?

Boundary of parish on the sea-shore, and in tidal rivers.—It seems clear that at common law the boundary of a parish on the sea-shore does not extend below low-water mark: and that the land between high and low-water mark *may* be within the parish, and may be proved to be so “by perambulations, common reputation, known metes and bounds and the like”; but the burden of proof lies on those alleging it to be within the parish, and, in the absence of evidence, it must (at common law) be taken not to form

(a) (1865), 11 H. L. Cas. 443; *supra*, p. 132.

part of the parish (*b*). Whether the rule of law which applied to the shore of the sea applied also to the shore of a tidal navigable river, was not clear (*c*). But the common law as to the shore of the sea and of a river is now altered by s. 27 of the Poor Law Amendment Act, 1868 (*d*), which, after dealing with extra-parochial places, enacts that—

“Every accretion (*e*) from the sea, whether natural or artificial, and the part of the sea-shore to the low-water mark, and the bank of every river (*f*) to the middle of the stream, which on the twenty-fifth day of December next shall not be included within the boundaries of or annexed to and incorporated with any parish, shall for [all civil parochial] purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary.”

Under this section the bed of the sea below low-water mark is not brought within the parish (*g*), but in some cases places below low-water mark have been added to the adjoining parish under special Acts or orders of the Local Government Board or the Board of Trade (*h*).

It must be specially noticed that the question of the parish boundary is distinct from, and independent of, the question in whom the soil is vested, whether in the Crown or in a subject. And the parish boundary is independent of the county boundary, the foreshore being at common law part of the county, whether within a parish or not (*i*).

Rateability of dock and harbour dues and tolls.—We have already seen (*k*) that tolls are not rateable *per se*: but where land affords facility for taking tolls, or tolls are paid for the use of land,

(*b*) *R. v. Musson* (1858), 8 E. & B. 900. See also *R. v. Gee* (1859), 1 E. & E. 1068.

(*c*) In *Duke of Bridgewater's Trustees v. Bootle* (1866), L. R. 2 Q. B. 4 (which related to the River Mersey) it was held that the same rule applied; but in *McCannon v. Sinclair* (1859), 2 E. & E. 53; 28 L. J. M. C. 247 (which related to the Thames at Rotherhithe), it was held that it did not; but BLACKBURN, J., in *Ipswich Dock Commissioners v. St. Peter's, Ipswich* (1866), 7 B. & S. 310, at p. 346, pointed out that *McCannon v. Sinclair* was not “consistently reported” in the two volumes above cited. See also *Waterloo Bridge Co. v. Cull* (1859), 1 E. & E. 213.

(*d*) 31 & 32 Vict. c. 122.

(*e*) A pier, consisting of a wooden deck resting on iron piles, was held not to be an “accretion from the sea,” nor an extra-parochial place within the earlier part of the section, in *Blackpool Pier Co. v. Fylde Union* (1877), 46 L. J. M. C. 189. Whether a stone pier would be an accretion, *quære*.

(*f*) It seems to make no difference whether it be a tidal navigable river or not.

(*g*) The question how far “the realm of England” extends below low-water mark was much discussed in *R. v. Keyu (The Franconia Case)* (1876), 2 Ex. D. 63. See also 41 & 42 Vict. c. 73, passed in consequence of that decision.

(*h*) See, for example, 51 & 52 Vict. c. clxx. (Torquay); 51 & 52 Vict. c. clxxii. s. 60; 53 & 54 Vict. c. lxii. s. 46 (Brighton); 60 & 61 Vict. c. cxxxix. (Margate); 61 & 62 Vict. c. cexlix. s. 6 (Lincoln and East Coast Railway and Dock Act); 61 & 62 Vict. c. cci. (Southwold Order, Art. 40); 62 & 63 Vict. c. clxxvii. (Lowestoft).

(*i*) *R. v. Musson* (1858), 8 E. & B. 900; *Embleton v. Brown* (1860), 30 L. J. M. C. 1; *R. v. Cunningham* (1859), Bell. C. C. 72.

(*k*) *Vide* Chapter XVI., p. 309; *R. v. Nicholson* (1810), 12 East, 330.

then the occupier of that land can be rated for the tolls, as part of the benefit of the occupation (*l*). As will be seen from the cases referred to below, the judges have not always agreed upon the question when tolls can be said to be paid for the use of the land (*m*). But, apart from this difficulty, there is another question—viz., whether it must be shown that the person rated is in occupation of the soil for the use of which he receives the tolls, or whether it is sufficient to show that the soil is vested in him. This difficulty does not generally arise in the case of an artificial dock, for that is, as a rule, both vested in and occupied by the dock authority; but the distinction becomes of importance in the case of a natural harbour, or the bed of a river, which has been dredged or otherwise improved by the port authority. This point can hardly be said to have been expressly decided, but in some of the cases it appears to have been assumed that if tolls are paid for the use of land which is vested in a person who receives them, that is enough to make him rateable for those tolls (*n*). It is submitted that this assumption is wrong, and that since the person to be rated under 43 Eliz. c. 2 is the occupier of land, it must be shown that the person to be rated for tolls as such is in occupation of the land for the use of which the tolls are paid. It was held by BLACKBURN, J., in *Commissioners of Faversham Navigation v. Faversham Union* (*o*), that if the person receiving the tolls is not an occupier of any land, there is no rateable subject. It must, however, be noticed that the occupation of land covered by water cannot be of the same character as the occupation of a quay. Where all persons (other than the owners of the harbour) are excluded except on payment of tolls, the owners in whom the harbour is vested may perhaps be found to be in the exercise of such powers over the harbour as to amount to occupation. So that although the distinction between ownership and occupation is important as a matter of law, it may not as a matter of fact often have to be considered.

There is another point which hitherto has hardly been sufficiently considered. If land which is occupied by the person rated offers

(*l*) See the judgments of BLACKBURN, J., in *Commissioners of Faversham Navigation v. Faversham Union* (1867), 31 J. P. 622; and in *New Shoreham Harbour Commissioners v. Lancing* (1870), L. R. 5 Q. B. 489. See also *Lewis v. Overseers of Swansea* (1855), 5 E. & B. 508; *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84, at pp. 90, 94.

(*m*) *Vide infra*, pp. 349—354.

(*n*) In *Blyth Harbour Commissioners v. Newsham*, [1894] 2 Q. B. 675, *infra*, p. 353, Lord ESHER, M.R., makes occupation essential, while KAY, L.J., seems to treat the vesting of the soil in the recipient of the tolls as sufficient to make the tolls rateable. See also *R. v. Berwick-upon-Tweed Union* (1885), 16 Q. B. D. 493; *R. v. Earl of Durham* (1859), 28 L. J. M. C. 232; *S.C., Earl of Durham v. Bishopwearmouth*, 2 E. & E. 230. Compare the decisions as to the distinction between artificial canals, and rivers, *supra*, p. 336.

(*o*) (1867), 31 J. P. 622.

special facilities for earning tolls (*p*), although the tolls are not paid for the use of that particular piece of land, and though they may be tolls in gross, and therefore not rateable, it is submitted that it may still be doubtful whether the existence of the tolls can be altogether ignored (*q*). In *R. v. North and South Shields Ferry Co.* (*r*), where the tolls of the ferry were held not rateable, it was held that the value of the landing-places must be taken “as enhanced by being available for the purpose of earning the tolls.”

Tolls paid for the use of a harbour or dock.—The question now to be considered is, assuming it to be shown that the persons rated are in occupation of land, under what circumstances can tolls be said to be paid for the use of the land, or so connected with the land that they must be rated as constituting part of the value of the land.

In *Lewis v. Overseers of Swansea* (*s*), the corporation of Swansea were entitled to certain tolls on all goods landed on the quays in the borough. These quays were either (1) occupied by and the property of the corporation; or (2) the property of the corporation but occupied by their lessees under leases reserving the tolls to the corporation; or (3) the property of the Duke of Beaufort. It was held that neither the corporation nor anyone to whom the tolls were let was rateable for any of the tolls. Lord CAMPBELL, C.J., said (*t*):

“What is the nature of the payment? If it is a payment made for the use of the quay, then when the corporation or their lessee were in occupation of the quay, the value of the toll would properly be taken into account in rating the quay; but if the payment be irrespective of the use of the soil, then the value of the toll could not be so taken into account. Is then this a payment for the use of the soil? . . . In the case of the land of the Duke of Beaufort, the dues are as much payable to the corporation for goods landed there as they are for goods landed on the soil of the corporation. That being so the toll cannot be corporeal; the payment cannot be for the use of the soil. It is therefore purely incorporeal and not the subject of rate.”

And WIGHTMAN, J., said (*u*):

“It is a mere accident that the corporation are the occupiers of a portion of the land. If they had not a foot of land, the toll would equally be payable to them. That decides the question, whether the toll is payable in respect of the use of the land.”

(*p*) See the judgment of BLACKBURN, J., in *Commissioners of Faversham Navigation v. Faversham Union* (1867), 31 J. P. 622.

(*q*) See the remarks as to the rating of lighthouses, *supra*, pp. 330, 331.

(*r*) (1852), 1 E. & B. 140; *supra*, p. 311. See also *Blyth Harbour Commissioners v. Newsham*, [1894] 2 Q. B. 675, *infra*, p. 353.

(*s*) (1855), 5 E. & B. 508.

(*t*) 5 E. & B., at p. 520.

(*u*) 5 E. & B., at p. 522.

It is sometimes argued that tolls connected with land are not rateable, if it is possible to sever the land from the tolls, and to let the land while reserving the tolls to the lessor. But this contention must be accepted subject to this qualification, that if tolls are paid for the use of the land and the land is let, the landlord reserving to himself the right to take the tolls without the intervention of the lessee, then the lessee is rateable for the full value of the land, as enhanced by the tolls, because the payment of tolls to the lessor is in effect a payment of rent in another form (*x*). In such a case the tolls are not the less paid for the use of the land, and are not the less rateable, because they are paid direct to the lessor.

In *R. v. Earl of Durham* (*y*), the tolls in question were payable to the Bishop of Durham (who was the owner of the soil of the port) by every ship which entered the port, whether it cast anchor there or not. It was held that the tolls were paid by the ship-owners to the owner of the soil for the use of his soil, consideration for the payment being the privilege of casting anchor if they chose, and the accommodation afforded by the owner of the port to ships frequenting it: and the tolls were therefore held to be rateable.

The Shoreham Harbour Case.—In *New Shoreham Harbour Commissioners v. Lancing* (*z*), commissioners appointed under a special Act made a new entrance to the harbour, with piers on either side to enclose the channel; and certain tolls were payable by all ships loading or unloading in the harbour. Neither the harbour itself nor the entrance to it was vested in the commissioners, but the piers at the entrance were so vested, and were in the occupation of the commissioners. It was held that the tolls were not so connected with the occupation of the piers as to be rateable. BLACKBURN, J., said (*a*):

“The question is whether the tolls are in any way to be taken into account in estimating the rateable value of the property. It is very clear in law that tolls are not *per se* the subject of a rate. It is equally clear that when parties occupy land, they are rateable for the value of that land, and that tolls, though not rateable, may be considered as enhancing the value of the occupation of the land, whenever it appears that the occupation of the land is so connected with them that it can be said that the tolls and rates are levied on account of the occupation of the land; or perhaps, though not levied on account of the occupation of the land, where they could not be received without an occupation of the land. This, however,

(*x*) *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276; *supra*, p. 248; *R. v. Dowlais Iron Co.* (1868), 10 B. & S. 208.

(*y*) (1859), 28 L. J. M. C. 232; *S.C. sub nom. Earl of Durham v. Bishopscarrowmouth*, 2 E. & E. 230.

(*z*) (1870), L. R. 5 Q. B. 489.

(*a*) L. R. 5 Q. B., at pp. 496, 498.

might be subject to some qualification (*b*). . . . I think that the profits which are derived from the tolls are too remote to enhance the value of the occupation of the piers. The argument for the respondents is this : without the entrance, few or none of the tolls could be received ; the entrance is essential to the receipt of the tolls. *De facto* it certainly is essential to enable the commissioners to levy the maximum tolls, and the entrance cannot, *de facto*, exist without the piers being kept up ; if the piers fell into decay the entrance would probably be choked up, and the tolls would be lost ; and, therefore, the possession and occupation of the piers is essential to earn the tolls, and consequently the occupation of them may be said to be enhanced by the value of the tolls received. There may be many instances in which things are of very great value for the preservation of valuable property elsewhere, but it cannot be said that the value of the occupation is enhanced because they preserve property elsewhere. Take the case of an extensive tract of rich fen land which is subject at times to be inundated, and an embankment built for the purpose of keeping the water out. It is necessary in order to protect the land that the embankment should be kept up, and the expense of doing that would be a charge on the land. But I think it would be a strong thing indeed to say that the parish where the bank was situate and kept up at an expense and at a positive loss, were entitled to rate the embankment at a higher rate, because without that bank the rich fen land inside it would be drowned. I think that would be too remote."

In the passage above quoted from the judgment of BLACKBURN, J., the question, whether the connection between the tolls received and the land occupied is too remote to be considered as enhancing the value of the occupation, is treated as a question of law. It is submitted that, underlying this question of law, there is really a question of fact, the answer to which answers the question of law. Rateable value is the rent which a tenant may be expected to give ; and we must understand the phrase "the value of the occupation is enhanced," as meaning that the rent which a tenant may be expected to give will be increased. Anything (no matter how remotely connected with the hereditament) which increases the

(*b*) In *Commissioners of Faversham Navigation v. Faversham Union* (1867), 31 J. P. 622, BLACKBURN, J., held that the tolls must be connected with the occupation of the land, so that if the occupier parted with the occupation he would part with the right to take the tolls. In *Ipswich Dock Commissioners v. St. Peter's, Ipswich* (1866), 7 B. & S. 310, at p. 347, the same learned judge said : "In ascertaining the rateable value the court are to consider everything attached to and connected with the occupation of the dock, so that it would pass in a lease to a hypothetical tenant, excluding that which belongs to the occupier in his individual right and would not so pass," and in that case it was held that certain coal dues, which were not "annexed or knit to the occupation of the dock," and had at one time belonged to a body of commissioners having no connection with the dock, were not rateable. But the earlier part of the passage above cited (if it means that *only* what would pass under a lease is to be considered) seems hardly reconcilable with the judgment in *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at pp. 36, 40 ; *supra*, pp. 166, 190. The true rule appears to be that one must take into account (1) all that the demise would give a title to, and (2) all that the demise would give the means of enjoying ; but that one must exclude from consideration all that any particular occupier may possess in his own individual right, and would continue to possess if he ceased to occupy.

rent which a tenant may be expected to give for that hereditament, increases the rateable value : whether any particular thing will increase the rent is a question of fact. If that question is answered in the affirmative, then it would seem to follow as a matter of law that it will increase the rateable value, and must be taken into account in estimating the rateable value. "All that could reasonably affect the mind of the intending tenant ought to be considered" (c).

The Hull Dock Case.—In *R. v. Hull Dock Co.* (d), the Hull Dock Company were entitled to certain tolls from all ships loading or unloading within the port, whether they entered the dock or not. Some (but not all) of the ships which paid toll did enter and use the dock, which was in the occupation of the company. The port, outside the dock, was not vested in, or in the occupation of the company. It was held that the company were not rateable for tolls paid by ships which did not enter the dock (e), but were rateable for tolls paid by ships which did enter. And Lord DENMAN said, "The ship which actually comes into and uses the docks is not the less benefited by them because the toll must have been paid even if it had not come in : and the benefit conferred by the use of the dock is not less the meritorious cause of the toll because other ships pay, to which that meritorious cause does not apply" (f). This case was distinguished—but not overruled—in *R. v. Berwick-upon-Tweed Union* (g) : in that case, the commissioners were entitled to certain harbour dues payable by all ships entering the harbour, whether they entered the dock or not, and certain additional dues payable only by those which entered the dock. The harbour was not vested in the commissioners, but the dock was vested in and occupied by them. It was held that the commissioners were rateable for the additional dues paid by ships entering the dock, but were not rateable for any of the harbour dues, even for that portion of the dues paid by ships which in fact entered the dock. CAVE, J., distinguished the case from *R. v. Hull Dock Co.* (h) by saying (i)—

"[In *R. v. Hull Dock Co.*] the docks were the sole meritorious cause of the company's right to the dues. . . . In the present case the dock is not the sole meritorious cause of the commissioners' right to the dues. On the contrary, the commissioners have executed and maintain works in the harbour by which ships using the harbour are directly benefited."

(c) *Per* Lord HALSBURY, L.C. : *Cartwright v. Sculcoates Union*, [1899] 1 Q. B. 667, at p. 673 ; *supra*, p. 165.

(d) (1845), 7 Q. B. 2.

(e) This decision followed *R. v. Bristol Dock Co.* (1841), 1 Q. B. 535.

(f) Lord ESHER, M.R., in the *Blyth Harbour Case*, treats this as a finding of fact which would not bind a court in another case : see [1894] 2 Q. B., at pp. 678, 679.

(g) (1885), 16 Q. B. D. 493.

(h) (1845), 7 Q. B. 2.

(i) 16 Q. B. D., at p. 498.

The Blyth Harbour Case.—The decision in *R. v. Hull Dock Co. (k)*, cited above, was reviewed, and in effect overruled, by the Court of Appeal in *Blyth Harbour Commissioners v. Newsham (l)*. In that case the commissioners were occupiers of certain quays adjoining the harbour, but the soil of the harbour itself was not vested in them. They were entitled (under a conveyance from the lord of the manor which did not convey the soil of the harbour) to levy “harbour dues” for all vessels entering the harbour, and “goods dues” for all goods shipped or unshipped at any place within the harbour, whether the appellants’ quays were used or not. It was found as a fact that the harbour improvements, and the facilities provided on the appellants’ quays had greatly increased the trade and augmented the appellants’ dues. But it was held that no part of the harbour dues, or goods dues, was to be taken into account as enhancing the value of the quays. The lord of the manor (who was the owner of the soil of the harbour) had, in fact, been rated for the dues before the conveyance to the commissioners, and it appears to have been assumed that he was rightly so rated : so that the somewhat anomalous result follows, that dues which were rateable in the hands of the lord of the manor are taken altogether out of consideration when conveyed to the harbour commissioners. Lord ESHER, M.R., said (*m*) :

“The harbour commissioners are not owners of the soil of the harbour ; but they have a right by Act of Parliament in respect of the harbour, and as the consideration for ships entering it, to impose dues or tolls upon all the ships which do enter it. The commissioners, if they say that they impose the dues by virtue of the Act of Parliament, cannot be rated in respect of those dues for the use of the harbour, for they are not the occupiers of it. The only persons who can be rated are the occupiers of the land ; and, if in respect of the use of the land they get certain emoluments, that fact adds to the value of the land ; but before they can be rated they must be the occupiers. The commissioners, therefore, could not be rated in respect of the harbour, and could not be rated in respect of the dues which are paid as a consideration for ships entering it. That being the position, the commissioners, under their statutory powers, purchase and become owners of land upon which they make quays : but the Acts which gave them power to make the quays did not give them the right to take dues in respect of the use of those quays. It gave them still a right to charge harbour dues in respect of the use of the harbour, but not any separate right to charge dues in respect of the quays. . . . The question is whether the payment relied on by the rating authority is a payment in respect of the use of the land which they are rating, or a payment in respect of something else. . . . [After pointing out that the harbour dues were equally payable whether the quays occupied by the commissioners were used or not, Lord ESHER continued :] One must ask oneself whether, if a person has to pay money

(*k*) (1845), 7 Q. B. 2.(*m*) [1894] 2 Q. B., at p. 677.(*l*) [1894] 2 Q. B. 293, 675 ; Ryde & Konstam’s Rat. App. (1894—1904), 130.

whether he gets a thing or not, it can reasonably be said that he pays the money for getting the thing. The question answers itself: it cannot be so."

Remarks on the Blyth Harbour Case.—The decision of the Court of Appeal in *Blyth Harbour Commissioners v. Newsham* (*n*), establishes the proposition that in order to make tolls rateable, they must be earned, not merely on the land, but by the land of which the person rated is in occupation: they must be payable *ratione soli*, and not merely *in solo*. There is, however, another question, viz., whether tolls which are not rateable may not be taken into account as increasing the rent which might be expected for the land to be rated. It is important to notice that this question was hardly considered at all by the court. If it can be shown that the occupation of a quay enables a harbour authority to earn tolls, which are not rateable because they are not paid for the use of any land occupied by the harbour authority, it may perhaps be held that in such a case the decision in the *Blyth Harbour Case* does not support the contention that in rating the quays the existence of the tolls can be left out of consideration altogether.

Payment of rates on tolls treated as evidence of rateability.—In considering whether tolls or similar property are rateable, the question sometimes arises whether it is permissible to give evidence of the fact that the property in question has, or has not, been in practice rated in the past. There is an important distinction to be noticed between different classes of cases.

Where the nature of the property, which it is sought to rate, is doubtful, or where it is uncertain whether land (in respect of which a toll is paid) is within the parish, evidence may be given as to the usage, and payment or non-payment of rates; for these matters throw light upon the nature of the property, or upon the position of the parish boundary, as the case may be. But where the question turns upon the construction of an Act of Parliament, there the usage is immaterial. Thus, in *Sutton Harbour Improvement Commissioners v. Plymouth Guardians* (*o*), the usage as to payment of rates was looked at in order to show (1) that Sutton Pool was within the rating area; and (2) that certain dues, which might have arisen from a franchise, or from the ownership of the soil, arose from the latter. So, too, in *Ipswich Dock Commissioners v. St Peter's, Ipswich* (*p*), a question was raised (*q*) whether a dock in a tidal river was extra-parochial, and evidence of payment of rates was admitted, and was considered of more weight than

(*n*) [1894] 2 Q. B. 293, 675; Ryde & Konstam's Rat. App. (1894—1904), 130.

(*o*) (1890), 63 L. T. 772.

(*p*) (1866), 7 B. & S. 310.

(*q*) Note that the case was decided *before* the passing of the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27: *vide supra*, p. 347.

evidence of reputation from perambulations. Payment of land tax (*r*) or of poor rate (*s*) has been used as evidence of the fact of occupation. Again, in *Esdale v. City of London Union* (*t*), the question in dispute was the true nature of (so-called) "tithes" in the city of London, and great weight was attached to the fact that they had never been rated. In *Edwards v. St Olave's Union* (*u*), the distinction between the two classes of cases is well illustrated : there an Act passed in 1817 substituted a special rate, payable to the rector, for immemorial customary payments. Evidence as to payment of rates up to 1817 was held admissible to show that the customary payments were rateable, but the rateability of payments under the statute of 1817 was held to depend solely on the construction of the statute : and the payments were held to be not rateable, though there was evidence to show that they had in fact been rated. "Usage ought not to be attended to in construing an Act of Parliament ; . . . where the words of the Act are doubtful, usage can be called in to explain them" (*x*). On this ground, the courts held that personal property was rateable under 43 Eliz. c. 2, and refused to recognise the practice of not rating it (*y*). So, too, in *R. v. Monmouthshire Canal Co.* (*z*), Lord DENMAN, C.J., said that the fact that certain land had not been rated for fifty years ought not to be taken into consideration in construing an Act of Parliament relating to it (*a*). It is true that in *Duke of Beaufort v. Mayor, etc., of Swansea* (*b*), it was said that "all ancient documents, where a question arises as to what passed by a particular grant, can be explained by modern usage" : but this was said with reference to the question whether a particular piece of land was within the limits of a manor, which was a question of fact.

In *R. v. Ellis* (*c*) non-payment of rates for over 100 years, in respect of lands devised for charitable purposes, was held to be immaterial with reference to the question whether the tenant of such lands was rateable ; and he was held liable, notwithstanding non-payment for so long a period. In this case the question was whether the tenant was liable under the Statute of Elizabeth ; if he was, usage could not repeal the statute.

(*r*) *Doe v. Seaton* (1834), 2 A. & E. 171.

(*s*) *Smith v. Andrews*, [1891] 2 Ch. 678.

(*t*) (1887), 19 Q. B. D. 431 ; *Ryde's Rat. App.* (1886—1890), 105 ; *infra*, p. 448.

(*u*) *Ryde's Rat. App.* (1891—1893), 293.

(*x*) *Per* GROSE, J. : *R. v. Hogg* (1787), 1 T. R. 721, at p. 728 : see also *R. v. Scot* (1790), 3 T. R. 602, at p. 604 ; *East London Waterworks Co. v. Mile End, Old Town* (1851), 17 Q. B. 512, at p. 522.

(*y*) See the cases cited in *R. v. Lumsdaine* (1839), 10 A. & E. 157, and pp. 3, 4, *supra*.

(*z*) (1835), 3 A. & E. 619, at p. 631.

(*a*) This negatives the view taken by Lord ELLENBOROUGH, C.J., in *R. v. Calder and Hebble Navigation* (1818), 1 B. & Ald. 263, at p. 267.

(*b*) (1849), 3 Ex. 413, at p. 425.

(*c*) (1842), 12 L. J. M. C. 20.

Method of valuing docks and harbours.—Speaking generally, the method of valuing docks and harbours is similar to that used in the case of a railway ; that is to say, from the gross receipts are deducted the working expenses, the tenant's share of the profits, the cost of maintenance and insurance, and the sinking fund for ultimate renewal, the remainder being the rateable value (*d*). Where, however, the docks or harbours are in the hands of a statutory body of trustees, or commissioners, who are bound to devote all their receipts to working expenses and maintenance, and the balance to paying off debt, no deduction can be allowed for tenant's profits (*e*). The questions relating to docks and harbours are so frequently complicated by provisions of special Acts that it is hardly possible to discuss them in detail (*f*). Frequently docks are owned by, or are subject to working agreements with, railway companies. These facts may affect the principle on which the docks are to be rated (*g*), or may raise the question whether the railway company or the dock company are to be rated for lines running over the dock property (*h*). These questions have been already dealt with in Chapter XIV. So, too, where a dock authority enter into special agreements with trading companies, whereby particular parts of the dock estate are appropriated to the use of those companies, questions may arise whether the trading companies or the dock authority are the rateable occupiers (*i*). The method of valuing warehouses and similar buildings occupied with docks is considered below (*k*).

The composition of the tenant's capital necessary to work a dock was considered in *R. v. Southampton Docks* (*l*). In that case it was held (*inter alia*) that the expenses of working a tug used for the purposes of the docks, but sometimes employed beyond the limits of the docks, were properly deducted from the gross receipts ;

(*d*) The question of apportionment in the case of a system of docks extending into several parishes is considered *infra*, p. 357.

(*e*) *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84.

(*f*) In *London and India Docks v. Stepney and Poplar Unions*, Ryde's Rat. App. (1891—1893), 153, will be found an instance in which singularly complicated questions arose. The report gives example of valuations made on different principles which may be useful as precedents. Some of these questions were considered by the Queen's Bench Division, in *London and India Docks v. Poplar Union* (1900), 64 J. P. 820 ; 83 L. T. 371 ; Ryde & Konstam's Rat. App. (1894—1904), 245.

(*g*) See the *Grimshy Dock Case*, *Manchester, Sheffield and Lincolnshire Rail. Co. v. Caistor Union* (not reported), *supra*, p. 224 ; *Sculcoates Union v. Kingston-upon-Hull Docks*, [1895] A. C. 136, *supra*, p. 239 ; *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276, *supra*, p. 248 ; *R. v. Dowlais Iron Co.* (1868), 10 B. & S. 208.

(*h*) See *Sutton Harbour Co. v. Plymouth Guardians* (1890), 63 L. T. 772, *supra*, p. 230.

(*i*) See *Allan v. Liverpool*, *Inman v. Kirkdale* (1874), L. R. 9 Q. B. 180, *supra*, p. 33 ; *Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, *supra*, p. 34.

(*k*) *Vide infra*, p. 359.

(*l*) (1851), 14 Q. B. 587 ; *infra*, p. 478 ; see also *London and India Docks v. Poplar Union* (1900), Ryde & Konstam's Rat. App. (1894—1904), 245, *infra*, p. 487, as to the rateability of hydraulic cranes. The distinction between machinery forming part of the tenant's plant and that forming part of the rateable hereditament is fully considered in Chapter XXV.

and that the value of the tug was part of the floating capital used in carrying on the concern.

In *London and India Docks v. Stepney and Poplar Unions* (*m*), the question was raised whether the cost of dredging should be regarded as a tenant's working expense, or as part of the cost of repairing the hereditament itself: in the former case the value of the dredging plant would represent part of the tenant's capital for which a deduction could be claimed: in the latter case the plant must be regarded as provided by the landlord out of his rent. The London quarter sessions held that the cost of dredging was included among the "other expenses necessary to maintain the hereditament in a state to command the rent" mentioned in the definition of "rateable value" (*n*), and that dredging must be regarded as a landlord's duty.

Docks extending into several parishes: apportionment of value.—In *R. v. Hull Dock Co.* (*o*), the company were the proprietors of several docks made at different times, and under different Acts. All the docks communicated with each other, and with the River Humber, and extended into several parishes. Every ship paid a single toll, which entitled her to go into any one or more of the docks, and all the tolls were carried to a general account. It was held that, in effect, this was the same as if one dock extended into several parishes; and that the rateable value in each parish must not be calculated according to the receipts in that parish, but according to the proportion which the water area of the docks in that parish bore to the water area of all the docks together; for although the "parochial earnings principle" (*p*) ought to be adopted wherever it was practicable, an assessment on the acreage principle was unavoidable in the particular circumstances. This case was distinguished in *Mersey Docks v. Liverpool* (*q*): there the appellants occupied docks on both sides of the Mersey, under Acts of Parliament which directed that the docks should form one estate under one management. A vessel having paid rates for entering one of the docks could use any of the docks of the same class on either side of the river, or of a higher class on paying the difference. The docks on the Liverpool side were much more frequented than the docks on the Birkenhead side. It was held that the Liverpool docks were not to be treated as one system with the Birkenhead docks; but that the earnings and outgoings of each set of docks must be kept distinct, and the

(*m*) Ryde's Rat. App. (1891—1893), 153.

(*n*) See s. 4 of the Valuation (Metropolis) Act, 1869, and compare the almost identical definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836. Both Acts are set out in Appendix II.

(*o*) (1852), 18 Q. B. 325.

(*p*) *Vide supra*, pp. 203—206.

(*q*) (1872), L. R. 7 Q. B. 643.

Liverpool docks must be rated according to the net earnings on that side. This decision was based upon the ground that the "parochial principle" must be followed whenever it is possible, and that the acreage principle must be adopted only in case of necessity when the other is inapplicable.

These decisions were reviewed in *Sculcoates Union v. Kingston-upon-Hull Docks* (*r*). Since the decision of *R. v. Hull Dock Co.* (*s*) several new docks had been built, and all of them did not communicate with each other, but the payment of one dock due entitled a ship to use all or any of the docks. The accounts of the company enabled them to ascertain (approximately) the earnings and expenses of each dock, and where a ship unloaded in one dock, and proceeded to load in another, half of the dues paid was attributed to each dock. The House of Lords held that there was no difficulty in applying the "parochial principle," which, even in *R. v. Hull Dock Co.* (*s*), had been admitted to be the sound principle if it were capable of application.

Lord HERSCHELL, L.C., said (*t*) :

"If the business of the dock company were so conducted that they purposely diverted traffic into one dock which otherwise would have come (were the convenience of the ship alone considered) into another dock, and so centralised the traffic in one or more docks and denuded the others of it, then the number of vessels loading or unloading in particular docks would no longer indicate the capacity for earning of the various docks. To follow the method adopted by the respondents [who contended for the "parochial principle"] would, no doubt, then lead to a wrong result. But there is no such case made here at all" (*u*).

This passage clearly indicates that it is not always right to follow blindly the "parochial principle" of ascertaining rateable value from the actual receipts and expenses in each parish. The assessment committee had contended that the adoption of the "parochial principle" ignored the fact that, when a ship passed through several docks, all of them contributed to the earnings, whereas (according to the company's contention) those earnings were to be attributed only to the docks in which the ship loaded and unloaded. In the Court of Appeal, Lord HALSBURY (*x*) adopted the "parochial principle," partly on the authority of *R. v. Kingswinford* (*y*), which excludes "contributive value" altogether: while in the House of Lords (*z*), Lord HERSCHELL treated the question as one

(*r*) [1895] A. C. 136.

(*s*) (1852), 18 Q. B. 325.

(*t*) [1895] A. C., at p. 145.

(*u*) On p. 146, Lord HERSCHELL said that "the water area, or some other method of that sort, must be applied" to a dock partly in one parish and partly in another; or to a case where expenditure or receipts could not be attributed to a particular part of the system but must be spread over the whole.

(*x*) See [1894] 2 Q. B., at pp. 77, 78.

(*y*) (1827), 7 B. & C. 236: see the remarks on this case, *supra*, p. 342.

(*z*) [1895] A. C., at p. 146.

of detail, involving no principle, but said, "There is no doubt that in such a case [*i.e.*, where a vessel uses two docks, and a third for passing from one to the other] a part of the payment made by the vessel is made for the convenience of passing through the intermediate dock"; and suggested that possibly the omission of the item altogether in all the docks would lead to the same result as if it were taken into account in all.

Warehouses connected with docks.—The decision in *Mersey Docks v. Liverpool* (*a*) raised another question, in the following year, in *Mersey Docks v. Birkenhead* (*b*), relating to the property of the Dock Board on the Birkenhead side, consisting of the docks and the warehouses, and other buildings connected therewith. Taken as a whole, the expenses exceeded the amount of the income derived therefrom, but the greater part of such expenses was attributable to the docks. The warehouses and other buildings were, however, capable of separate beneficial occupation apart from the proximity to and connection with the docks; and were enhanced in value by reason of such proximity and connection. The respondents admitted that the docks themselves were not capable of profitable occupation, and ought not to be rated (*c*), but contended that the warehouses and other buildings were rateable. The appellants contended that the docks, warehouses, and other buildings must be treated as a whole; and that, as the whole was not occupied at a profit, no part of it could be rated. It was held that the warehouses and other buildings should be rated separately from the docks, and at their value as enhanced by the connection with the docks.

The principle of valuing warehouses separately from the docks, in connection with which they are occupied and worked, was applied by the London quarter sessions in *London and India Docks v. Stepney and Poplar Unions* (*d*) to warehouses held with docks belonging to a trading company, which were worked at a profit, and the receipts and expenditure connected with the warehouses were eliminated from the general receipts and expenditure of the dock company; and this decision was upheld by the Queen's Bench Division in subsequent proceedings (*e*).

(*a*) (1872), L. R. 7 Q. B. 643, *supra*, p. 357.

(*b*) (1873), L. R. 8 Q. B. 445.

(*c*) This admission was, perhaps, in accordance with the decision in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443, *supra*, pp. 132—134; but it is submitted that since the decision of *London County Council v. Erith and West Ham*, [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413, *supra*, pp. 139, 141; the absence of pecuniary profit arising from the occupation can no longer be regarded as a reason for holding valuable property to be not rateable.

(*d*) Ryde's Rat. App. (1891—1893), 153.

(*e*) *London and India Docks v. Poplar Union* (1900), 64 J. P. 820; 83 L. T. 371; Ryde and Konstan's Rat. App. (1894—1904), 245.

The rating of wharves and wharfage dues.—In the case of wharves, forming part of a system of docks, for which wharfage dues are paid, it seems that the effect of *Sculcoates Union v. Kingston-upon-Hull Docks* (*f*) is that the dues must be treated in the same way as other earnings of the docks, and must be regarded as enhancing the value of the hereditament in that parish in which the wharf lies; for wherever it is possible to do so the “parochial earnings principle” must be applied. It is not, however, clear that this principle necessarily involves the treatment of the wharfage dues as earned solely by the land on which the wharf is situated, to the exclusion of the water in which the ship floats alongside: so that if the wharf were in one parish and the water in another, the former parish would be credited with the whole of the wharfage dues. In the *Hull Docks Case* in the Queen’s Bench (*g*), MATHEW, J., suggested during the argument that wharfage dues were closely analogous to warehouse rents. But this does not settle the question: for, if the wharf be analogous to a warehouse, the dock in front of it may be compared to the private courtyard of the warehouse (*h*). Such a courtyard would form part of the curtilage of the warehouse, and would be valued with it as one indivisible hereditament. On this principle, part of the value of the occupation represented by the wharfage dues should be attributed to the water space immediately adjoining the wharf; and this view appears to be supported by the remarks of Lord HERSCHELL, in the House of Lords, in deciding the case referred to (*i*). But in *R. v. Dowlais Iron Co.* (*k*), where a wharf was let by the dock trustees to a tenant, it was held that dues charged on goods landed on the wharf from ships in the dock, or loaded from a wharf in ships, were earned by the wharf and not by the dock. In that case, however, the two alternatives put before the court were, whether the dues were earned entirely by the dock or by the wharf. The question whether they were earned in part by each appears not to have been considered.

In the case of a wharf not forming part of a dock system, it is not easy to say whether evidence can be given of the business actually done, and the profits made, by the particular occupier. The London quarter sessions (*l*) held such evidence to be inadmissible; and this decision is, perhaps, supported by the decision of the Court of Appeal in *Dodds v. South Shields Union* (*m*), but that

(*f*) [1895] A. C. 136: *vide supra*, p. 358.

(*g*) Ryde’s Rat. App. (1891—1893), 348, at p. 354.

(*h*) Possibly the same considerations may not apply to a dock (which is private property) and to a navigable river open to everybody.

(*i*) See [1895] A. C. 146, *supra*, p. 358.

(*k*) (1868), 10 B. & S. 208.

(*l*) See *Lafone v. St. Olave’s Union* (1881), Ryde’s Met. Rat. App. 278.

(*m*) [1895] 2 Q. B. 133.

case has been much shaken by the decision of the House of Lords in *Cartwright v. Sculcoates Union* (*n*).

It has been held by the London quarter sessions that a wharf, used mainly for warehousing goods (*o*), comes within class 5 ("buildings without land") in the third schedule to the Valuation (Metropolis) Act, 1869 (*p*) ; but that if the premises are of a composite character, as being partly dock, partly wharf (*q*), or if they contain stabling and machinery (*r*), they must be put in class 11 of that schedule ; and that if they are used substantially for purposes of manufacture, they should be put in class 8 ("mills and manufactories") (*s*).

(*n*) [1900] A. C. 150 ; Ryde & Konstam's Rat. App. (1894—1904), 167. These cases are considered *infra*, pp. 457, 462.

(*o*) *Voss v. St. Olave's Union* (1881), Ryde's Met. Rat. App. 253 ; *Lafone v. St. Olave's Union*, Ryde's Rat. App. (1891—1893), 34.

(*p*) The classes limit the deduction to be made from the gross to arrive at the rateable value of different kinds of property. The schedule is set out in Appendix II.

(*q*) *Magniac v. St. Olave's Union* (1881), Ryde's Met. Rat. App. 292.

(*r*) *Middle Class Dwellings Co. v. St. Olave's Union*, Ryde's Rat. App. (1891—1893), 61.

(*s*) *Braby & Co. v. Greenwich Union*, *ibid.*, p. 54.

CHAPTER XIX.

MOORINGS AND FLOATING VESSELS.

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Floating vessels not rateable unless they occupy land.—

When personal property was rateable (*a*) ships were rated in the parish which was regarded as their home (*b*). But since the passing of the Poor Rate Exemption Act, 1840 (*c*), ships (as mere floating chattels) have never been rated. But questions have arisen as to floating vessels which have been moored more or less permanently in one spot, and which (in some cases) rest on the ground at low water. The decisions are not easily reconcilable with each other, but the true view of the law appears to be that although the floating vessel is not itself rateable, the use of permanent moorings fixed in the ground (at all events if it be an exclusive use) may amount to an occupation of land so that the owner of the floating vessel is rateable for that occupation (*d*). In that case, the question whether the floating vessel can be rated merely affects the amount, and not the liability to be rated.

In *R. v. Morrison* (*e*), the appellant occupied a shipbuilding yard on the banks of a tidal navigable river, and owned a floating dock which floated at high water, and grounded at low water on the bed of the river. It was moored by chains, of which some were fastened to posts in the yard, some to anchors or posts in the bed of the river. The dock was frequently moved, and did not always remain within the parish. It was held (1) that the dock *per se* was not rateable; and (2) that the shipbuilding yard could

(*a*) *Vide supra*, p. 2.

(*b*) *R. v. White* (1792), 4 T. R. 771; *R. v. Jones* (1807), 8 East, 451; *R. v. Shepherd* (1817), 1 B. & Ald. 109.

(*c*) 3 & 4 Vict. c. 89: set out in Appendix II.

(*d*) A question may sometimes arise as to whether the moorings are within the parish for which the rate is made: on this point *vide supra*, pp. 346, 347.

(*e*) (1852), 1 E. & B. 150.

not be valued as enhanced by reason of the floating dock (*f*). In considering the decision on the second point, it must be noticed that (so far as appears from the case) the floating dock (though in fact used in connection with the appellant's yard) could have been used equally well in connection with any other yard on the banks of the same river. The value of the yard by itself was found to be 57*l.*—that is, a tenant would give that rent for it; and it could only be “enhanced in value” by reason of the dock if the owner of the dock would give a higher rent for the yard because he owned the dock. But if other yards (equally suitable) were available, he would give no higher rent for the yard in question than the ordinary value in the market, and if any higher rent were demanded he would go elsewhere.

The decision in *R. v. Morrison* (*g*) must be contrasted with *Tyne Pontoons Co. v. Tynemouth Union* (*h*), in which the appellants were the owners of two pontoons used for precisely the same purposes, and almost in the same manner, as the floating dock in *R. v. Morrison*, save that the pontoons in the *Tynemouth Case* were kept permanently moored in an artificial creek (excavated on land belonging to and occupied by the appellants), where the pontoons had remained for several years, though they were capable of being towed away, even into the open sea. It was held that the premises were rightly rated as enhanced in value by reason of the pontoons. CAVE, J., said (*i*) :

“No doubt if the respondents had been driven to contend that the pontoons themselves must be rated, there would have been more ground for the appellants' contention. If these pontoons had only been moored in the river [*i.e.*, moored over land not belonging to the appellants], they could only have been rated for mooring. It is not like the case of *R. v. Morrison* (*k*). They [the pontoons] are occupied with the yard, and are permanently attached to it.”

If carefully examined, the case of *Tyne Pontoons Co. v. Tyne-mouth Union* (*l*) will be found to belong to the class of cases of which *Tyne Boiler Works Co. v. Longbenton* (*m*) is the most important. The real question decided was not whether the Tyne Pontoons Company were in occupation of land by means of their floating pontoons, but whether land (which was admittedly in their occupation) should be rated as enhanced in value by means of the pontoons.

(*f*) The question whether the appellant was in occupation of the posts or anchors in the bed of the river was apparently not considered at all.

(*g*) (1852), 1 E. & B. 150.

(*h*) (1897), 76 L. T. 782; 13 T. L. R. 506.

(*i*) 76 L. T., at p. 785.

(*l*) (1897), 76 L. T. 782.

(*k*) (1852), 1 E. & B. 150.

(*m*) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241; see *infra*, p. 485.

Floating piers permanently moored.—The case of *R. v. Morrison* (*n*), cited above, must also be contrasted with *R. v. Leith* (*o*), decided a few months earlier. The latter case related to one of the floating steamboat piers in the Thames, at Lambeth, the barges being moored to anchors sunk or embedded in the bed of the river. The steamboat company were rated for the land, the landing-place, the barges, and the anchorages. The court did not consider the question whether the company occupied part of the bed of the river by means of the anchors, but held that although the barges were not rateable, the mention of them in the rate meant that the increased value which they bestowed upon the land (*i.e.*, the river bank) had been taken into consideration in valuing the land ; and, therefore, held the rate to be right. It must be noticed that the question whether the barges (or the possibility of using barges to make a convenient landing-place) added to the value of the land was a question of fact for the sessions, and not for the Queen's Bench to determine. But even with this explanation it is not very easy to reconcile *R. v. Leith* with *R. v. Morrison* ; for in *R. v. Leith* the sessions appear to have considered, not what the owner of the barges would give for the land in order to moor his barges opposite to it, but what the land with the barges was worth to him after he had moored the barges. The former, and not the latter, appears to be the true measure of rateable value if the barges are not to be regarded as having become part of the land.

In *Forrest v. Greenwich Overseers* (*p*) a question was raised as to a similar pier, composed of two barges, one of which was always afloat, while the other grounded at low water on blocks fixed in the bed of the river. The barges were kept in position by chains fastened to iron anchors placed in the bed of the river, and by a chain fastened to an iron staple fixed in stone stairs (on the bank) which were open to the public, and abutted upon a public street. The platform for passing from the stairs to the nearest barge was not in any way fastened, and was removed altogether at night. The pier had remained without being removed for fourteen years, and it was held that the owners of it were rateable. Lord CAMPBELL, C.J., said (*q*) :

“ Had the pier always rested on the ground, no question could have been raised as to its rateability. . . . The appellants are the occupiers of land by the use which they make of the blocks, of the stairs for holding the

(*n*) (1852), 1 E. & B. 150.

(*o*) (1852), 1 E. & B. 121. The case was decided on a local Act, but Lord CAMPBELL, C.J. (*ibid.*, p. 136), regarded the decision as applicable to 43 Eliz. c. 2, though he subsequently threw doubt upon the point : see *R. v. Morrison* (1852), 1 E. & B. 150, at p. 163.

(*p*) (1858), 8 E. & B. 890.

(*q*) 8 E. & B., at p. 829.

staples, and of the iron anchors permanently placed in the bed of the river (*r*). These anchors cannot properly be likened to the anchors of ships dropped for a temporary purpose" (*s*).

This decision must be compared with *Grant v. Oxford Local Board* (*t*), where the use of a barge moored in a somewhat similar way was held not to amount to an occupation of land.

Pontoon moored, but moved from time to time.—In *Manchester, Sheffield and Lincolnshire Rail Co. v. Guardians of Hull* (*u*), the railway company owned a pontoon which they used as a landing-stage for a steam ferry across the river Humber. The pontoon grounded at low water, and remained aground for about four hours at each tide. It was moored by chains to a public pier under a licence from the corporation in whom the pier was vested. At one end of the pierhead the company had fastened a cross-piece of timber (which was their own property) to the piles of the pier to prevent chafing or damage. At the other end, the company had driven into the bed of the river a very large pile which was their property, but was bolted to the timbers of the pier; and the chain from the pontoon passed round the pile and was attached to the pier. As long as the chain passing round the pile remained attached to the pontoon, it was impossible to remove it from the piles of the pier without either breaking the link at the end of the chain or cutting or removing some of the piles of the pier. When the tide rose the pontoon floated, and it was moved from time to time by means of the chains by which it was fastened, so as to be opposite that part of a sloping gangway at which it was most convenient to land, according to the state of the tide; it was moved about sixty-four feet, or its own length. The gangway between the pontoon and the pier was removed at night; and two of the railway company's workmen were constantly employed upon the pontoon to work the chains and winches for moving it. It was held that the railway company were not in occupation of land and were not rateable: that the grounding of the pontoon at low water did not amount to an occupation of land: that the pile driven into the soil was not under the control of the railway company and was of no use to them, but was under the control of the corporation, who might take it away if they chose, and might also order that the chains which were attached to the pier should be cast off.

(*r*) The separate use of each, not the combined use of all, of the things specified seems to be treated as amounting to an occupation of land.

(*s*) Compare the distinction drawn by BLACKBURN, J., in *Holland v. Hodgson* (1872), L. R. 7 C. P. 328, at p. 335, cited *infra*, p. 506, between the anchor of a ship and an anchor fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge.

(*t*) (1868), L. R. 4 Q. B. 9, *infra*, p. 368.

(*u*) (1896), 75 L. T. 127; 60 J. P. 789; 12 T. L. R. 389.

This decision turned almost entirely on the special facts of the case, which resemble most closely those which were considered in *Watkins v. Milton-next-Gravesend* (*x*), *Grant v. Orford Local Board* (*y*), and *Forrest v. Greenwich Overseers* (*z*). In the first two of those cases the owner of the floating vessel was held not to be in occupation of land, while in the last he was held to be in occupation and to be rateable.

Moorings in the bed of a river.—The class of cases with which we now have to deal has given rise to some apparent, if not real, conflict of judicial opinion.

In *Watkins v. Milton-next-Gravesend* (*a*), the conservators of the Thames, who were the owners of the bed of the river, and of certain “moorings” fixed therein, granted the appellant the permission (and, as the court assumed, exclusive permission) to use the moorings, until either party should give one month’s notice to determine the licence.

The appellant agreed to pay 30*l.* annually towards the maintenance of the moorings, which consisted of two large iron fan-shaped screws, screwed into the bed of the river to a depth of about eight feet, and connected together by chains, fastened to a central ring, to which the appellants’ hulk was moored. The hulk was moored entirely by the stern, and swung with the tide, changing its position: it never took the ground. The hulk had neither sails nor engines, and had been five years at its moorings without removal; it could be towed away, and in the ordinary course required removal for repairs about once in five years. It was held that the appellant was not rateable, because he was not the occupier but had only a licence to use the moorings. BLACKBURN, J., said (*b*):

“I think these moorings are so attached to this part of the soil of the river, that if the appellant was the occupier of the moorings, he would be occupier of the soil. . . . There may be a grant of many easements which are conveyed solely to one person, and yet do not confer any occupation, such as a wayleave to carry coals from a colliery to the sea-shore; an important right confined to that colliery alone; that does not make the person who has the sole use of a private way over the land rateable; or in the more familiar case of a lodger, who has the sole right to the use of certain rooms in a house, he is not made by that means rateable, if the agreement is that the tenant of the house shall retain the possession, as in the general case of a lodging he does, for the purpose of looking after the management of it; the lodger is merely the inmate. Whenever that happens the lodging-house keeper is rateable, although the lodger is the person in possession; and although he would have a good action against the landlord if he were to put another lodger in occupation with him.”

(*x*) (1868), L. R. 3 Q. B. 350.

(*y*) (1868), L. R. 4 Q. B. 9, *infra*, p. 368.

(*z*) (1858), 8 E. & B. 890, *supra*, p. 364.

(*a*) (1868), L. R. 3 Q. B. 350; 37 L. J. M. C. 73; 18 L. T. 601; 16 W. R. 1059; 32 J. P. 294.

(*b*) L. R. 3 Q. B., at pp. 355—357.

This decision was followed by *Cory v. Churchwardens, etc., of Greenwich (c)*, in which the appellants were owners of a coal derrick permanently moored in the Thames, by two single-fluke anchors on the shore side, by two stones on the channel side, and by two stream anchors at the head and stern. The anchors and stones were merely dropped into the river, and the stones were not embedded in the soil. The anchors and stones could be hauled on board the derrick by the machinery thereon, and the derrick had, in fact, been moved from another position, bringing her stones and anchors with her, to the position occupied at the time of the rate. The moorings were put down by the appellants, by permission of the conservators of the Thames, who retained the right to remove the moorings, if they deemed it inexpedient that they should remain. On these facts it was held that the appellants were not rateable, because the anchors and stones were mere accessories of the derrick, and were movable things not susceptible of occupation; the derrick being merely anchored at the spot where she floated.

The case of *Cory v. Bristow*.—The question of rateability was raised again in *Cory v. Bristow (d)* with regard to the same (and another) derrick, on facts slightly different, or differently stated. It was found that the derrick was moored on the land side by two single-fluke anchors placed in holes dredged out, large enough to contain the whole of the anchor, to a depth of seven feet below the bed of the river, the holes being afterwards filled up with ballast. The stones were similarly sunk in the bed of the river, and it was impossible for the derrick to lift the anchors and stones. Another derrick belonging to the appellants was similarly moored, save that the anchors, being heavier, sank by their own weight, and fan-shaped screws instead of stones were used. These screws and anchors could not be weighed by the derrick in the ordinary way. The moorings were laid down by permission of the conservators, the work being done by their men, but paid for by the appellants. The derricks had been moored at the same place for some years, but daily changed their position slightly with the ebb and flow of the tide (*e*). It was held by the House of Lords that, although the conservators of the Thames might order the moorings to be removed on giving a week's notice, the appellants were in occupation of a part of the soil and bed of the river. Lord CAIRNS said (*f*):

“ You have here moorings which are clearly fixed into and bedded in the soil of the River Thames just as much as if piles had been driven ten or twenty

(c) (1872), L. R. 7 C. P. 499. The case is of somewhat doubtful authority in consequence of the decision in *Cory v. Bristow* (1877), 2 App. Cas. 262, *infra*.

(d) (1877), 2 App. Cas. 262.

(e) It is not expressly stated, but it may be inferred, that the derricks never took the ground at low water.

(f) 2 App. Cas. 271.

feet deep into the soil, and if you find any person in occupation of those moorings, and that occupation is a beneficial occupation, the person so occupying is occupying hereditaments within the statutes which create chargeability to the assessment to the poor. [After distinguishing the case from *Watkins v. Milton-next-Gravesend* (*g*), on the ground that there the moorings belonged to the conservators, not to the person rated, Lord CAIRNS continued:] It remains to look more accurately at what is the character of the occupation of the appellants, and how it is that they came to have the occupation of these moorings. For the purpose of rating it might, indeed, be sufficient to look at the mere fact of occupation (*h*). They are found in occupation of that which is to them a valuable occupation of this fixed property, and are therefore rateable, even though it might turn out that their occupation is a wrongful one, or one the propriety of which they cannot justify. But it appears to me that this possession of the moorings is a rightful one, and is itself to be designated, according to the most accurate expression, an 'occupation' of the moorings."

And Lord HATHERLEY said (*i*) that the right of the conservators to order the removal of the moorings on giving a week's notice did not interfere with the exclusive possession of the appellants so long as it lasted (*k*).

The Oxford University Barge Case.—In *Grant v. Oxford Local Board* (*l*), the Oxford University boat club were rated in respect of their barge at Oxford. The facts were thus stated in the case: The barge (or house boat) floats on the river, and is moored at a distance of about thirty feet from the bank by means of two iron rings, which are fixed to the barge, and pass loosely and movably round two solid fixed posts, driven into the bed of the river, allowing the barge to rise and fall with the water. In some very dry seasons the barge rests on the bed of the river for a short time. The barge, though capable of being moved, is never in fact moved from its station. Four smaller posts support a movable gangway between the bank and the barge. The bank belongs to the Dean and Chapter of Christ Church, the bed of the river to the corporation of the city. All the posts were driven into the bed of the river (more than twenty years before the making of the rate) for the purpose for which they were used, but without the leave or licence of the corporation or of any other person, and no rent or other acknowledgment has ever been paid. It was held that the boat club were not in occupation of land and were not rateable. COCKBURN, C.J., said (*m*) :

(*g*) (1868). L. R. 3 Q. B. 350, *supra*, p. 366.

(*h*) Compare the cases cited above, at pp. 51—54.

(*i*) 2 App. Cas., at p. 276; the passage is cited *supra*, p. 20.

(*k*) A tenant at will is, until the will be determined, an occupier: *per* Lord DENMAN, C.J., *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156, at p. 169, *supra*, p. 265; see also *R. v. East London Waterworks* (1852), 18 Q. B. 705, *supra*, p. 267, and *Electric Telegraph Co. v. Salford* (1855), 11 Ex. 181, *infra*, p. 374.

(*l*) (1868), L. R. 4 Q. B. 9.

(*m*) L. R. 4 Q. B., at p. 13.

"There is nothing to show that the posts are not at the present moment in the occupation of the owners of the soil. The posts have been permanently fixed in the soil; how they came to be fixed, by whom, or by what authority, does not appear. Whether it was by permission of the owners of the soil or not, we do not know, or whether it was a mere act of encroachment and trespass. But there is nothing to satisfy me that the University boat club have the exclusive enjoyment of these posts in them. I see nothing which at all satisfies me that if any other person, navigating that part of the river, were minded to treat these posts as a mere mooring-place in the bed of the river for the general convenience and accommodation of the public, and came and attached other barges or vessels to one of these posts, or did any other act which might interfere with the assumed enjoyment or occupation of these posts on the part of the boat club, the boat club would have a remedy by action of trespass or otherwise against the person so interfering with this assumed right on their part. There does not seem to be any exclusive occupation in the club, and inasmuch as exclusive occupation must necessarily be the foundation of their rateability, it seems to me it would be wrong in this case to say that this property in their hands is capable of being rated."

It must be noticed that this decision rests almost entirely on the absence of proof that the boat club had any legal title to the exclusive use of the posts. But it was said in the House of Lords, in *Cory v. Bristow* (*n*), "for the purpose of rating it might indeed be sufficient to look at the mere fact of occupation"; and in *R. v. Leith* (*o*), in the course of the argument, Lord CAMPBELL, C.J., said, "for the present argument, we must assume the occupation to be rightful."

Now, if it was true that the boat club were in fact the only persons who had used the posts, and if the assumption be made that the posts were fixed and used lawfully—*i.e.*, by leave and licence of the owners of the soil—then it is by no means clear that the boat club could not have brought an action against a trespasser who interfered with their occupation (*p*), and the test applied by COCKBURN, C.J., would have led to a conclusion contrary to that which he arrived at. Apart from the question of title, it seems very difficult to say that the boat club were not as much in occupation of land by means of their posts and the use of them as were the appellants in *Cory v. Bristow* (*q*), and as long as the barge remained between the posts no other vessel could float there.

(*n*) (1877), 2 App. Cas. 262, at p. 273; *vide supra*, p. 368.

(*o*) (1852), 1 E. & B. 121, at p. 131; cited above on p. 52.

(*p*) See *Dyson v. Collick* (1852), 5 B. & Ald. 600; *Harper v. Charlesworth* (1825), 4 B. & C. 574, at p. 585, which shows that actual possession is sufficient to enable a party to maintain trespass against a wrongdoer.

(*q*) (1877), 2 App. Cas. 262; see especially the remarks of Lord CAIRNS, *supra*, pp. 367, 368.

CHAPTER XX.

TRAMWAYS, TELEGRAPHS, AND TELEPHONES.

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In what cases tramways are rateable.—The first question to be determined is whether the person who has a right to use a tramway is an occupier of land at all : if he is not, and has a mere easement, then he is not rateable. In *R. v. Jolliffe* (a) the appellant, for the purpose of working his coal mines, made an arrangement for the use of the existing waggon-ways of an adjoining landowner, on payment of a certain sum of money per ton of coals carried. It was held that the appellant had a mere right of passage, which was an easement, and that he was not in occupation, and was therefore not rateable in respect of the waggon-ways. But in *R. v. Bell* (b) the defendants had taken a lease of wayleaves from the Dean and Chapter of Durham over land in the hands of their tenant (c), and under the powers of the lease made a railway, or waggon-way, with sleepers and rails, erected a bridge, levelled the ground in many places, fenced the railway, put up gates (which were kept locked by the defendants) and erected two houses for the gate-keepers. It was held that the effect of the exercise of these powers was to put the defendants in exclusive occupation of the land. Lord KENYON, C.J., said :

“One ground of argument is that, because the Dean and Chapter could only grant a wayleave (d), therefore nothing more than a wayleave passed

(a) (1787), 2 T. R. 90. This case is explained in *Roberts v. Aylesbury* (1853), 1 E. & B. 423.

(b) (1798), 7 T. R. 598.

(c) The lease to the agricultural lessee reserved to the dean and chapter the right to grant waggon-ways on payment of compensation.

(d) *I.e.*, because the soil had already passed to the agricultural lessees.

to the defendants ; but we are not to inquire into the titles of the occupiers. If a disseisor obtain possession of land, he is rateable as the occupier of it " (e).

In this case the defendants, by means of their fences and gates, excluded all persons, except their own servants, from passing over or using the surface of the rails, or any other part of the land used as a waggon-way. The principle of the decision was carried still further in *Pimlico Tramway Co. v. Greenwich Union* (f), in which it was held that a tramway company who laid down a tramway in a highway were rateable as occupiers, although the soil of the highway was vested in the highway authority, and the public had the right to pass over the surface of the rails as part of the highway. BLACKBURN, J., said (g) :

"Under the Tramways Act, 1870, authority is given to the promoters, under certain conditions which I need not at present enumerate, to lay down along the roadway a tramway, and to make it in such a way that along that tramway there may be run a carriage with wheels having a flange going into a groove or space which keeps it upon the line ; and the tramway is laid down solely and entirely for the purpose of facilitating the use of such carriages, with these flanged wheels, along that portion of the ground over which the tramway is made. . . . They (the company) are occupiers of land to the same extent and in the same manner as in the cases which are now perfectly well established, and of every day occurrence, where a gas company or a waterworks company lay in the road their main pipes. . . . By s. 34 of the Act (h) when the tramway is laid down the promoters may use on it carriages with flange wheels, or wheels suitable only to run on the rail prescribed by such Act, and subject to the provisions of the special Act and this Act, the promoters and their lessees shall have the 'exclusive use of the tramways for carriages with flange wheels, or other wheels suitable to run only on the prescribed rail' " (i).

The important points to be noticed in this case appear to be that the tramway company had (and exercised) a right to place and permanently keep in position a metal rail attached to the soil, and to keep a groove by the side of that rail free from obstructions : and, further, to use that rail and groove in a peculiar manner, to the exclusion of all other persons from that mode of user.

In *Holywell Union v. Halkyn District Mines Drainage Co.* (k), the drainage company were held rateable as occupiers of a tunnel

(e) Cf. *Holywell Union v. Halkyn District Mines Drainage Co.*, [1895] A. C. 117, *supra*, pp. 47—51. See also p. 52, note (p).

(f) (1873), L. R. 9 Q. B. 9.

(g) L. R. 9 Q. B., at pp. 13, 14.

(h) The Tramways Act, 1870 (33 & 34 Vict. c. 78).

(i) By s. 54 of the Tramways Act, 1870, a penalty is imposed on persons (other than the promoters) using the rail with flange wheels, or wheels suitable only for the rails. An instance in which this penalty was enforced will be found in *Cottam v. Guest* (1880), 6 Q. B. D. 70.

(k) [1895] A. C. 117, *supra*, p. 47.

used for draining a mine, although the mining company had and exercised the right to lay down a tramway in the tunnel: the question whether that tramway could be separately rated has been already considered (*l*).

The method of valuing tramways.—The rating of a railway obviously suggests a close analogy to the rating of a tramway. In the case of a tramway which deals with comparatively short distances, questions of “contributive value” are less likely to arise than in the case of a railway (*m*), and the “parochial principle” of calculating rateable value from the receipts and expenses in each separate parish must be followed as closely as the circumstances admit. In *London Tramways Co. v. Lambeth* (*n*) the system of tramways extended its branches into several parishes, while in some of the parishes two or more converging routes united and ran over one set of rails. The assessment sessions appear to have considered it to be impossible to ascertain the precise earnings in each parish, and therefore credited to each parochial section a mileage proportion (*o*) of the earnings of each route in that parish, so that where two or more routes ran through the parish, that parish had the benefit of a share in the earnings of each route.

Advertisements in tramcars.—In *North Metropolitan Tramways Co. v. St Mary, Islington* (*p*), a question was raised whether a sum of 1,763*l.* received for advertisements on the cars of the company should be brought into account, the company contending that it was a mere profit of trade, not arising out of the rateable hereditament at all. The assessment sessions rejected this contention, and the decision is clearly right. It is true that the advertisements are not affixed to the rateable hereditament, but to the cars which are chattels, and belong to the hypothetical tenant. But it is impossible to argue that the hypothetical tenant, in considering what rent he would pay, would ignore the fact that by taking the tram-lines and putting cars thereon to be used by the public, he would be enabled to earn from advertisements a sum of 1,763*l.*, which the cars could never earn if they stood in a private yard. Assuming that the receipts from the advertisements are profits of trade, and therefore not rateable, still the profits of trade

(*l*) *Supra*, p. 49.

(*m*) *Vide supra*, pp. 201—227. And see p. 203 as to the application of the “parochial principle” to railways. On p. 250 will be found a summary of the method of valuing a line of railway.

(*n*) (1874), Ryde's Met. Rat. App. 103. The case illustrates the way in which several questions of detail may be dealt with, and specimens of valuations are given in the report. The judgment is also reported, 31 L. T. 319.

(*o*) *Cf. Melbourne Tramway Co. v. Mayor, etc., of Fitzroy*, [1901] A. C. 153, at p. 172.

(*p*) (1874), Ryde's Met. Rat. App. 112.

will affect the rent which will be paid for a hereditament if that hereditament affords peculiar advantages for carrying on the trade (*q*). Whether *the whole* of the receipts from advertisements, without any deduction whatever, should be brought into account, is a question of fact to be dealt with by the sessions.

Stables and stations connected with tramways.—After ascertaining the net receipts of the tramway company there must be deducted, at some stage of the calculations, a sum to represent the gross value of the stables and stations (*r*), and the rates thereon, in the same way as a similar deduction is made in respect of stations in valuing a line of railway (*s*): for the net receipts are earned by the stables and stations together with the line, and if the stables and stations are separately rated, and no deduction for them is made in valuing the line, the company will be to some extent rated twice over. The stables and stations of a tramway company are, however, sometimes held by them on lease. The rent paid under such a lease cannot form a deduction from the gross receipts in ascertaining the rateable value of the whole system, including line, stables, and stations; but, if the rent has been recently fixed, it may sometimes be taken as the true value, and may be deducted (together with the cost of the repairs borne by the tenant) from the value of the entire system, in order to ascertain the rateable value of the line alone: but the deduction thus made is not a diminution of value, but merely an apportionment between the several parts of the system.

Repairs of tramways.—In *London Tramways Co. v. Lambeth* (*t*) a question was raised whether the company were entitled to a deduction from the gross receipts in respect of the cost of repairing the roadway between and by the side of the rails, a duty cast upon the company by s. 28 of the Tramways Act, 1870 (*u*). The assessment sessions held that the deduction was permissible, on the ground that the repairs were essential to the maintenance and efficiency of the system. It must, however, be noticed that the section above cited makes it the duty of the promoters (*v*) to repair

(*q*) See *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at p. 38, *supra*, pp. 190, 191.

(*r*) This method appears to have been adopted in *Melbourne Tramway Co. v. Mayor, etc., of Fitzroy*, [1901] A. C. 153, at pp. 171, 172.

(*s*) *Vide supra*, pp. 193—195. The deduction must represent the gross and not merely the rateable value, and must also include the rates. In *London Tramways Co. v. Lambeth* (1874), Ryde's Met. Rat. App. 103, both parties went wrong on this point.

(*t*) (1874), Ryde's Met. Rat. App. 103; 31 L. T. 319.

(*u*) 33 & 34 Viet. c. 78.

(*v*) Not of their lessee: compare s. 34 with s. 28. If the tramway be let, the duty of repairing appears to rest on the lessors (as between them and the highway authority) and not on the occupiers; see *British Electric Traction Co. v. Inland Revenue Commissioners*, [1902] 1 K. B. 441, at p. 450.

the roadway not only between the rails, but for a width of eighteen inches outside them. It is not clear how the maintenance of the whole of the width can be regarded as essential to the maintenance and efficiency of the system. Again, it is not at all clear that the company can be regarded as in exclusive occupation of any part of the roadway except the space occupied by the rails, and the groove for the flanged wheels, and so much of the road as is necessary to keep the rail and groove in position : so that the repairs of the rest of the roadway cannot be regarded as repairs of the rateable hereditament. It may be said that whatever be the nature of the repairs, the expense is rendered necessary by the Act in order to enable the company to earn their profits : and that if the profits are looked at, the necessary expenditure to enable the company to earn them must be looked at also. But (apart from the doubt whether the company would be liable if the tramway were let) the question is whether the repairs, and the cost of the repairs, are in the nature of rent-service or rent ; or in the nature of a payment in kind for acquiring rights over the highway : and if either of these questions be answered in the affirmative, then the cost of the repairs ought not to be deducted (*y*). On the other hand, if the cost can be regarded as similar to the government duty paid by a railway company, or the sum paid by a publican for his license, then it ought to be deducted.

Occupation of land by telegraph wires and posts.---Telegraphs are now, speaking generally, in the hands of the Crown, and are therefore not rateable, or are rateable under special statutory provision (*z*) ; but some telegraphs and telephones are in the hands of private persons or companies, and are not exempt from rating, and it may therefore be useful to note the decisions upon the question when the erection and use of posts and wires amounts to an occupation of land, and who is rateable for such occupation.

In *Electric Telegraph Co. v. Salford* (*a*), the telegraph company, by agreement with the North Western Railway Company, had erected posts and wires in the ordinary way by the side of the railway. The posts were subject to removal at the option of the railway company to some unobjectionable position if their working or position interfered with the operations of the railway, with the signals, or with new works or alterations of the line. Where the wires crossed a viaduct, they were collected in a wooden box or cover, affixed to the parapet by means of iron hold-fasts driven

(*y*) Cf. *Melbourne Tramway Co. v. Mayor, etc., of Fitzroy*, [1901] A. C. 153, at pp. 166, 169—171 ; the points dealt with by the judgment perhaps did not precisely include the cost of repairing the roadway, but they furnish a useful analogy.

(*z*) See the Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 22, *supra*, p. 102, where the effect of the statute is considered.

(*a*) (1855), 11 Ex. 181.

into the brickwork ; and for part of the distance the wires were placed in iron pipes laid down between the lines of rails (*b*). It was held that the telegraph company were rateable as occupiers of land by both posts and wires (*c*). POLLOCK, C.B., said (*d*) :

“There is no distinction between the occupying land, by passing through a fixed point of space in the air to another fixed point, or by passing in the same manner through land or water. Land extends upwards as well as downwards, and whether the wires and posts are fixed above or below the surface, they occupy a portion of the land. The circumstance that they are subject to removal to another place, if found inconvenient, makes no difference. . . . In this case the telegraph company has the exclusive occupation of the soil, when not interfered with by the railway company, and it seems to me that it would make no difference if the posts were so heavy that they would remain without being fixed in the ground ”

And MARTIN, B., said (*e*) :

“It is true that the railway company have a right to direct the removal of the posts and wires to a more convenient place ; but that only shows that this company are strictly tenants at will of the soil occupied by them. That is no objection to the rate ” (*f*).

The decision in Lancashire Telephone Co. v. Manchester.—The principles of the decision in *Electric Telegraph Co. v. Salford* (*g*) were adopted and applied to what was apparently, but not really, a more extreme case, in *Lancashire Telephone Co. v. Manchester* (*h*). There the company erected overhead telephone wires, which were carried from their offices to the premises of their subscribers. The wires were supported either by poles fixed in the ground or by being attached to the roofs, chimneys, or walls of buildings. The attachment was made in the case of a single wire by an iron spike driven into the building, or by a bolt screwed into the ridge, or by an iron bracket nailed to the corner of the chimney ; or, in the case of a number of wires, by means of standards or ridge saddles attached to the roofs of the buildings, and fastened by iron bolts or stays. The consent of the owners or occupiers of the land or buildings was given by agreements, in which the company undertook to pay an annual rent, and to remove the wires and attachments upon a certain

(*b*) No distinction is drawn in the judgments between the wires suspended on posts and the rest of the wires.

(*c*) All the judges mention the wires as well as the posts, and this was accepted as their decision by CAVE, J., in *Paris and New York Telegraph Co. v. Penzance Union* (1884), 12 Q. B. D. 552, at p. 559.

(*d*) 11 Ex., at p. 186.

(*e*) 11 Ex., at p. 189.

(*f*) See *R. v. East London Waterworks Co.* (1852), 18 Q. B. 705, *supra*, p. 267 ; *R. v. Chelsea Waterworks Co.* (1833), 5 B. & Ad. 156, at p. 169, *supra*, p. 265.

(*g*) (1855), 11 Ex. 181.

(*h*) (1884), 14 Q. B. D. 267.

notice. The company had no key of the outside doors, and could only obtain access to the roofs by permission of the occupiers. It was held by the Court of Appeal, affirming the decision of the Queen's Bench Division, that the company were in occupation of land, and were rateable. Lord ESHER, M.R., said (*i*) :

"The real question seems to me to be—having regard to the spikes and brackets which are affixed to the houses for the purposes of carrying the wires which are attached to them—whether the company are rateable in respect of all those things, the whole apparatus, affixed to the houses. How are they affixed? They are affixed to brickwork or to wooden saddles solidly fixed to brickwork. What is it that keeps them where they are? It is not merely the screws or the things which affix them, but the building to which they are affixed; not every part of such building, but so much of it as is really necessary to support them, and which building is itself supported by the land into which it is fixed. Therefore, it seems to me that each of these things is a thing which is fixed to the soil in order to support it where it is. If you take so much of the building as is necessary to support these things, and so much of the land as is necessary to support so much of the building, as being all one, then these things are fixed to the soil, and so much of the soil as is necessary to keep them where they are is occupied by them. Therefore in that way they occupy a part of the soil. It is not like a right to hang things (*k*) on something which is fixed on the soil, but it is a right given by the owner or occupier of each house to affix these things to it, in order that they may be supported by the house and by the ground on which the house stands. . . . These things belonged exclusively to the company, and were to be used solely for their benefit, and not in the least for the benefit of the occupiers of the houses. Under those circumstances it seems to me that this case is therefore like the case of the telegraph wires fixed to posts which are fixed in the ground. The reason why it has been held that they are in the occupation of the persons to whom they belong, is because the property in them is solely the property of these persons, and that they use them solely on their own account, and that the persons who have given the right to fix them to the soil have no interest in them, or power over them, except the power of giving notice to have them removed or taken away."

Observations on Lancashire Telephone Co. v. Manchester.—

Primâ facie the judgment in this case, from which the preceding passage is quoted, goes further than the decision in *Electric Telegraph Co. v. Salford* (*l*), and is not easily reconcilable with *Smith v. Lambeth Assessment Committee* (*m*), because the telephone company could only obtain access to their wires on the roofs of houses, by permission of the occupiers of those houses. But in *Electric Telegraph Co. v. Salford* the telegraph company could

(*i*) 14 Q. B. D., at pp. 269—271.

(*k*) Cf. *Grant v. Oxford Local Board* (1868), L. R. 4 Q. B. 9, *supra*, p. 368, and *Manchester, Sheffield and Lincolnshire Rail. Co. v. Guardians of Hull* (1896), 75 L. T. 127; *supra*, p. 365.

(*l*) (1855), 11 Ex. 181, *supra*, p. 374.

(*m*) (1882), 10 Q. B. D. 327, *supra*, p. 36.

only obtain access to their wires by the side of the line or on the viaduct by permission of the railway company. In *Smith v. Lambeth Assessment Committee* (which related to Messrs. W. H. Smith and Son's bookstall at Waterloo Station) the appellants were held to be not in occupation, because of the general control which the railway company exercised over their station. It is true that, so far as access to the telephone wires for the purpose of repairing or altering them was concerned, the company had (to say the least) no greater rights than those given to Messrs. W. H. Smith and Son, who were held not to be occupiers of their bookstall. But the telephone company had, at all times and without any restrictions, the use of their wires for the purpose for which they were constructed, and for which alone they could be profitably used: the restrictions applied only to the alteration, removal, or repair of the wires. Where a water company has a pipe running under the land of a stranger, they are clearly rateable as occupiers of land by means of their pipe, although they cannot obtain access to it, for inspection, alteration, or repair, without the permission of the occupiers of the land.

Exclusive enjoyment, distinguished from exclusive occupation of wires.—In *Paris and New York Telegraph Co. v. Penzance Union* (*n*) the company made an agreement with the Postmaster-General, whereby the latter was to provide and maintain two special wires, with batteries and other appliances, to be used only by the company in connection with their sub-marine cables. The wires were, under the agreement, to remain the property of the Postmaster-General; but the terms used as to the question whether he was to retain or part with possession were ambiguous. The Postmaster-General was not bound to appropriate to the company any definite wires, and he might change them as he thought fit. The wires were supported on posts in the ordinary way; for part of the distance they were the only wires supported by the posts; for other parts, other wires belonging to and used by the Postmaster-General were also supported by the same posts. It was held by CAVE, J. (Lord COLERIDGE, C.J., strongly doubting, but not dissenting), that the effect of all the clauses in the agreement was that the company were not occupiers of the two wires and were not rateable. CAVE, J., said (*o*):

“Suppose a stranger injured the wires in some way that did not interfere with their power of transmitting messages, as, for instance, by painting them, or affixing advertisements to them; could the company bring an action? I think not. Suppose some way of utilising the wires were discovered which would produce a profit also without interfering with their power of trans-

(*n*) (1884), 12 Q. B. D. 552.

(*o*) 12 Q. B. D., at pp. 562, 563.

mitting messages, to whom would the right of so using the wires belong (*p*)? Surely to the Postmaster-General and not to the company. But if these things are so, the Postmaster-General is the occupier and not the company. On the whole, I have come to the conclusion that the Postmaster-General, and not the company, occupies the rateable subject, and that the company have only an exclusive enjoyment, without exclusive occupation (*q*). The case seems to me to resemble most the case of a lodging-house keeper who agrees that a particular lodger shall have the exclusive use of a bedroom, and stipulates that if the rent is not duly paid, the lodger shall give up, and the lodging-house keeper may resume possession of the bedroom. I apprehend that in that case no one could suggest that the lodger was rateable; more especially if, as is the case here, the selection of the particular bedroom were to be left to the keeper of the lodging-house."

(*p*) Compare the judgment of the same learned judge in *Mayor, etc., of Southport v. Ormskirk Union*, Ryde's Rat. App. (1891—1893), 355, *supra*, p. 266.

(*q*) The same distinction is drawn in *Smith v. Lambeth Assessment Committee* (1882), 10 Q. B. D. 327, *supra*, p. 37.

CHAPTER XXI.

MINES, QUARRIES, BRICKFIELDS, CEMETERIES.

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The rateability of mines.—All mines are now rateable, either under the Statute of Elizabeth or under the Rating Act, 1874 (*a*). The Statute of Elizabeth expressly mentions "coal mines" as rateable property, directing the rate to be laid upon "every occupier of lands, houses, tithes impropriate, or appropriations of tithes, coal mines, or saleable underwoods" (*b*). In consequence of the express mention of *coal mines*, it was decided that the maxim "*expressio unius est exclusio alterius*" applied, and that

(*a*) 37 & 38 Vict. c. 54 : see Appendix II., *infra*.

(*b*) See p. 2, *supra*.

therefore no mines, other than coal mines, were rateable. The earliest reported case upon the point is *Lead Co. v. Richardson* (c), from which it appears that in 1762 lead and tin mines were not in practice rated. The court gave the following reasons for their decision : that mines, other than coal mines, are governed by particular laws, which give the right of working to other persons than owners or lessors, or persons having any right of property in them, and that there is infinite expense and uncertainty in finding lead mines.

In the later cases the "particular laws" relating to the working of lead and other mines were made a foundation for a contention that the mining lessees, or persons working the mines, were not occupiers, but had merely a licence to enter and dig for minerals, the occupation remaining vested in the owners or lessors. The special expense and uncertainty may no doubt properly be considered as long as they are regarded merely as showing a reason why the maxim "*expressio unius est exclusio alterius*" should apply to the construction of the statute ; but expense and uncertainty ought not to be regarded as a reason for exempting lead and other mines from rateability if they are within the words of the statute (d). This, however, was not very clearly established when *Lead Co. v. Richardson* was decided, for the court caused special inquiry to be made as to whether lead and tin mines were in practice generally rated, as though the practice could affect the construction of the Act (e). In *Rowls v. Gells* (f), however, Lord MANSFIELD seems to regard the uncertainty attaching to lead mines merely as a reason why lead mines are not within the statute 43 Eliz. c. 2. In *R. v. Cunningham* (g) and in *R. v. Bilston* (h), it was assumed that iron mines, not being named in the statute 43 Eliz. c. 2, were not rateable. In *R. v. Sedgley* (i) it was held, on the authority of the earlier cases, that the maxim "*expressio unius*" having been applied and acted upon for a long time, must prevail (k). A final attempt to review the earlier decisions was made in *Morgan v. Crawshaw* (l), in which the House of Lords declined to disturb the series of cases which had decided that the maxim applied. The decision was followed three years later by the passing of the Rating Act, 1874 (m).

(c) (1762), 3 Burr. 1341.

(d) The court seems almost to have realised that risk could affect only the quantum and not the liability to be rated in *R. v. Alberbury* (1801), 1 East, 533.

(e) *Cf. R. v. Canterbury* (1769), 4 Burr. 2291, *supra*, p. 3.

(f) (1776), 2 Cowp. 451.

(g) (1804), 5 East, 478.

(h) (1826), 5 B. & C. 851 ; see also the remarks on this case, *infra*, p. 381.

(i) (1831), 2 B. & Ad. 65.

(k) *Cf. Crease v. Sawle* (1842), 2 Q. B. 862.

(l) (1871), L. R. 5 H. L. 304.

(m) 37 & 38 Vict. c. 54, *infra*, p. 396.

Quarries and mines, how distinguished.—At a time when mines (other than coal mines) were held not rateable, it was more important than it is now to distinguish between mines and quarries. A brief reference to the decisions may therefore be sufficient. In *R. v. Sedgley* (*n*), it was held that the question whether particular works were a quarry or a mine was rather a question of fact than of law; and in *R. v. Brettell* (*o*) and *R. v. Dunsford* (*p*) that the principle of law is to look to the mode in which the article is obtained, and not to its chemical or geological character. On this principle it was held in *R. v. Sedgley* that limestone workings forty or fifty yards below the surface, approached by perpendicular shafts and tunnels, were mines, and therefore not rateable; and in *R. v. Brettell* that pits containing glass-house pot clay and fire-brick clay, worked by means of shafts forty or fifty yards deep, were also mines. It had been held in the earlier case of *R. v. Alberbury* (*q*) that lime works, at or near the surface, were not mines and were rateable; and a similar decision was given in *R. v. Woodland* (*r*) with reference to slate works, which (though in many places upwards of fifty yards deep) were not approached by shafts, and were commonly worked by daylight, though a level had been known to be driven one hundred yards under ground.

Exemption of property connected with a mine.—In *R. v. Bilston* (*s*), in which it was assumed to be already well established that iron mines were not rateable, it was held that the exemption extended to an engine used only for pumping water from the mine for the purpose of working the mine. It is not quite clear from the reports (*t*) what was the real effect of the decision: the judges may either have decided (1) that the engine was not rateable because it was part of a non-rateable mine; or (2) that the engine was not rateable because it was not in itself a source of profit. If the former was the point decided, then (assuming the judges to be right in fact) they no doubt stated the law correctly, as it then stood (*u*); if the latter alternative was the ground of the decision, then the decision is clearly no longer law. In *Talargoch Lead Mining Co. v. St. Asaph* (*x*), the appellants were held rateable in respect of a watercourse occupied by them for the purpose of working machinery connected with a lead mine, and *R. v. Bilston*

(*n*) (1831), 2 B. & Ad. 65.

(*o*) (1832), 3 B. & Ad. 424.

(*p*) (1835), 2 A. & E. 568.

(*q*) (1801), 1 East, 533.

(*r*) (1802), 2 East, 164: see also *R. v. Brown* (1807), 8 East, 528.

(*s*) (1826), 5 B. & C. 851; 8 D. & Ry. 737.

(*t*) See the discrepancy between the two reports above cited, pointed out in the note to *Guest v. East Dean* (1872), L. R. 7 Q. B. 334, at p. 339.

(*u*) That is, before the Rating Act, 1874 (37 & 38 Vict. c. 54), had enacted that mines, other than coal mines, should be rated.

(*x*) (1868), L. R. 3 Q. B. 478.

was questioned. In *Guest v. East Dean* (*y*), the appellant was the owner of iron mines, and rented two and a half acres of surface land, partly over and partly adjoining the mines : he occupied the mines and surface together, using the surface for the purpose of working the mines and getting the ore, and he had erected thereon buildings, machinery, workshops, and tramways. It was held that the appellant was rateable in respect of the surface land with the buildings, machinery, workshops, and tramways, though the surface land, etc., without the mines would be practically valueless, and the land, buildings, etc., were occupied in connection with the non-rateable iron mines.

The definition of the term "mine" in s. 7 of the Rating Act, 1874 (*z*), now determines what property is to be rated with and as part of a mine made rateable by that Act.

What amounts to occupation of a mine.—In some of the earlier cases an attempt was made (and sometimes with success) to show that the mining adventurers working the mines were not the occupiers : thus, in *R. v. Baptist Mill Co.* (*a*), BAYLEY, J., said that the mining adventurers might be considered as servants working for the owner of the soil, receiving as a compensation for their labour and expenses, a certain part of the profits. And in *R. v. St. Austell* (*b*), it was held by the same judge that the adventurers had not the sole and exclusive occupation of the mine, but had only the sole and exclusive privilege of working it (*c*). But the decision in *R. v. St. Austell* upon this point appears to be overruled by *Roads v. Overseers of Trumpington* (*d*), *Kittow v. Liskeard Union* (*e*), and *Holywell Union v. Halkyn District Mines Drainage Co.* (*f*).

Mining lessees formerly not rated because of the risk.—Probably in order to minimise the effect of the decisions that mines other than coal mines were not rateable, the courts at an earlier date made a distinction, holding that the produce of such mines (when reserved in kind) was rateable, although neither the mines themselves nor rents payable *in money* to the lessors of such mines were rateable. This has been called "a mere device"

(*y*) (1872), L. R. 7 Q. B. 334. See also the explanation of this case in *Kittow v. Liskeard Union* (1874), L. R. 10 Q. B. 7, in which it was expressly decided that surface works are rateable, though occupied in connection with a mine which is not rateable.

(*z*) 37 & 38 Vict. c. 54 : set out in Appendix II.

(*a*) (1813), 1 M. & S. 612, at pp. 620, 621.

(*b*) (1822), 5 B. & Ald. 693, at p. 700.

(*c*) Compare a similar decision in an action of ejectment (*Hanley v. Wood* (1819), 2 B. & Ald. 724).

(*d*) (1870), L. R. 6 Q. B. 56 ; *supra*, p. 42.

(*e*) (1874), L. R. 10 Q. B. 7 ; *supra*, p. 41.

(*f*) [1895] A. C. 117 ; *supra*, p. 47.

to escape from the construction put upon the statute (*g*): the decision appears to be wholly illogical, and BLACKBURN, J., in *Roads v. Trumpington* (*h*), said that "the doctrine is very peculiar and rests upon authority alone."

The earliest case on the subject is *Rowls v. Gells* (*i*), in which the plaintiff, as lessee of the Crown, was entitled to and was rated for "lot and cope." The duty of "lot" is the thirteenth dish or measure of lead-ore got, dressed, and made merchantable, at all the lead mines in the parish: and "cope" is 6*d.* for every load or nine dishes of lead-ore raised at such mines (*k*). The case found that the duties of lot and cope were received by the plaintiff without any risk or expense in working the mines: that in the year 1775 (when the rate was made) the duties amounted to the clear sum of 500*l.*, but that they were uncertain and varied every year. Lord MANSFIELD, in holding the plaintiff to be rateable for both "lot" and "cope," said (*l*):

"Lead mines are not within the statute, 43 Eliz. c. 2. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes, therefore, upon the adventurers would be hard, and they are excused. But the person, lord or landlord, who in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable upon the same ground. . . . Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light: because the lord pays, not for that which the lessee or adventurer is excused from paying for; but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual, for there may be none for years" (*m*).

On this passage it may be remarked that risk and uncertainty of profit may be a good reason why the Statute of Elizabeth was not extended to lead mines, but cannot form a reason for exempting from rateability property which is within the statute. The risk no doubt affects the quantum, but cannot get rid of liability to be rated. If we apply the measure of value first introduced by the

(*g*) *Van Mining Co. v. Llanidloes* (1876), 1 Ex. D. 310.

(*h*) (1870), L. R. 6 Q. B. 56.

(*i*) (1776), 2 Cowp. 451. This case was followed and approved by Lord KENYON, C.J., in *R. v. St. Agnes* (1789), 3 T. R. 480; but apparently doubted by the same judge in *R. v. Parrot* (1794), 5 T. R. 593.

(*k*) It is to be noticed that "lot" was payable in kind and "cope" in money, though the court made no distinction between the two. In *R. v. Tremayne* (1832), 4 B. & Ad. 162, at p. 168, PARKE, J., said: "The distinction was not pressed on the attention of the court (in *Rowls v. Gells*), and the principles on which such property is rateable were not so well understood as they are now." See also *per* Lord ELLENBOROUGH, C.J.: *R. v. Pomfret* (1816), 5 M. & S. 139, at p. 142, cited *infra*, p. 386.

(*l*) 2 Cowp., at p. 453.

(*m*) The last words here cited refer to *R. v. Vandewall* (or *Vanderelt*) (1760), 2 Burr. 991, in which the lord of a manor was held not rateable in respect of the casual profits of the manor. The judgment as reported seems to be based on the practice of not rating such quit-rents and profits; but the decision is more properly founded on "the objection of double-rating the same property in the hands of the landlord as well as the tenant" (*per* Lord KENYON, C. J.: *R. v. Alberbury* (1801), 1 East, 533).

Parochial Assessments Act, 1836, s. 1, it is plain that the greater the risk the less will be the rent at which the property might reasonably be expected to let ; but if there be in fact an occupier at all, he would probably be willing to give at least a nominal rent.

It is further to be noticed that in *Rowls v. Gells* (*n*) no notice was taken of the question whether the person rated for "lot and cope" was liable to be rated as an inhabitant, or as an occupier of lands, etc. ; nor does it appear from the report whether the person rated was or was not an inhabitant resident in the parish. In 1776, the date of the decision, an inhabitant was rateable in respect of his ability, from whatever source derived, whether from real or personal property (*o*) ; and could only escape by showing that, if he were rated, there would be a double rating of the same property in the hands of both landlord and tenant,—an objection which could not arise where the mining adventurers were not rated in respect of the mines.

Dues in kind rateable ; rents not rateable.—In the next case, *R. v. Bishop of Rochester* (*p*), the question was raised whether mining lessors (*not being inhabitants*) were rateable in respect of rent reserved in money, and it was held that they were not, on the ground that they were not in occupation of anything within the statute, 43 Eliz. c. 2 (*q*). But three years later, in *R. v. Baptist Mill Co.* (*r*), it was held that persons receiving dues in kind, and not in money, were rateable as occupiers. In that case the lord of the manor being entitled to a lot, toll, or free share of all calamine raised within the manor, in the proportion of one part in four, demised his rights to lessees (none of whom resided in the parish), at a rent of 210*l.* per annum. The lessees received the lot, toll, etc., from the miners who raised the calamine ; but the lessees were not in occupation of any land or buildings in the parish, unless the lot, toll, etc., were considered as land. Lord ELLENBOROUGH, C.J., said :

"This [*i.e.*, the lease] appears to me to be a demise of a specific portion of the produce of land, or, in other words, land itself, free from risk or uncertainty. . . . The whole is raised by the labour of the adventurer, and when raised the lord is entitled to one-fourth of it. Until raised the lord may be considered as working with the adventurers by the hands of the labourers ; but when raised the lord's share redounds to him. That constitutes land, and may be fairly construed as such within the meaning of this statute."

It is submitted that this decision is very unsatisfactory, and can neither be supported by the facts, nor reconciled with the decisions

(*n*) (1776), 2 Cowp. 451.

(*o*) *Vide supra*, pp. 2, 3.

(*p*) (1810), 12 East, 353.

(*q*) The decision that a rent payable in money is not rateable was affirmed by *R. v. Wellbank* (1815), 4 M. & S. 222 ; *R. v. Tremayne* (1832), 4 B. & Ad. 162 ; *R. v. Crease* (1840), 11 A. & E. 677.

(*r*) (1813), 1 M. & S. 612.

which it professes to follow. First, it is clear that the lessees, though they ran no risk of loss in mining operations, were liable to pay the yearly rent in any event, and would receive only the one-fourth share of the calamine actually raised, and if none were raised, they would receive nothing; to this extent, therefore, they ran a risk of loss. Next, if the lord of the manor (and his lessees) could be regarded as occupiers of "lands," they were occupiers of mines other than coal mines, and, therefore, on the authority of *The Lead Co. v. Richardson* (s), were not rateable. This difficulty seems not to have been sufficiently considered in any of the cases (t); and it is submitted that if *The Lead Co. v. Richardson* be taken to have rightly decided that the occupiers of mines other than coal mines are not rateable, then it is impossible to support the decision in *Rowls v. Gells* (u), *R. v. St. Agnes* (x), and *R. v. Baptist Mill Co.* (y), that the lessors of such mines receiving dues in kind can be rated in respect of such dues as occupiers of "lands." The principle of *R. v. Baptist Mill Co.*, and the cases on which it was based, was, however, again acted upon in *R. v. St. Austell* (z). In that case the owner of the soil granted to the mining adventurers for the term of twenty-one years full liberty to dig and search for tin and copper ore, and all other mines and minerals, and to erect such sheds, etc., as they should think necessary; yielding and paying to the lessor one-eighth share of all ore, minerals, etc., raised and brought to grass, "the same having been first well and sufficiently spulled, picked, washed, stamped, or dressed, or otherwise, according to the several natures thereof, made merchantable and fit to be smelted." The lease contained covenants to deliver the one-eighth share of ore, or pay the value in money, at the election of the lessor. The adventurers had worked the mine without any interference on the part of the lessor, and had made shafts and erected houses, and the workings were in their sole occupation or possession. No part of the ore had ever been rendered to the lessor in kind, but one-eighth of the value in money had been paid. The lessor was not an inhabitant, nor an occupier of any land in the parish, unless he was to be deemed such occupier in respect of the dues. The court held that the lessor was rateable as an occupier of land, and that the case was, therefore, governed by *Rowls v. Gells* (u) and *R. v. Baptist Mill Co.* (b), and not by *R. v. Bishop of Rochester* (c).

(s) (1762), 3 Burr. 1341.

(t) See, however, the remarks of PARKE, J., in *R. v. Tremayne* (1832), 4 B. & Ad. 162, at p. 170.

(u) (1776), 2 Cowp. 451.

(x) (1789), 3 T. R. 480.

(y) (1813), 1 M. & S. 612.

(z) (1822), 5 B. & Ald. 693. Cf. *Van Mining Co. v. Llanidloes* (1876), 1 Ex. D. 310, and *Roads v. Trumington* (1870), L. R. 6 Q. B. 56, cited above, on p. 42.

(a) (1776), 2 Cowp. 451.

(b) (1813), 1 M. & S. 612.

(c) (1810), 12 East, 353.

The judgments take no notice of the point that if the lessor was an occupier, he was an occupier of a tin, copper, or lead mine, and was, therefore, not rateable according to the decision in *The Lead Co. v. Richardson* (*d*), which case, though mentioned in argument, is ignored by the judgments.

The principle of *R. v. Baptist Mill Co.* (*e*) was again acted upon by the Queen's Bench in *R. v. Crease* (*f*), and by the Exchequer Chamber in *Crease v. Sawle* (*g*): in the last-mentioned case the decision of the court was based upon the ground that it was undesirable to overrule a series of cases extending from 1776 onwards, and constantly acted upon (*h*). And the principle of those cases has now been recognised and adopted by Parliament in s. 13 of the Rating Act, 1874 (*i*), which enacts that "nothing in this Act shall apply to a mine of which the royalty or dues are for the time being wholly reserved in kind, or to the owner or occupier thereof." This section consequently renders it necessary in rating any such mine to refer to the old cases above cited.

Lessor receiving smelted ore not rateable.—The courts having decided that lessors of mines other than coal mines receiving merely a money rent were not rateable, but that they were rateable if they received dues in kind, a further distinction was made in *R. v. Pomfret* (*k*). In that case, the lessors of lead mines were entitled to receive one-fifth of all the lead "that should be *smelted* from the ore to be from time to time dug, wrought, and raised in, from, and out of the mines." The court held that the case was distinguishable from *Rowls v. Gells* (*l*), *R. v. St. Agnes* (*m*), and *R. v. Baptist Mill Co.* (*n*). In delivering the judgment of the court, Lord ELLENBOROUGH, C.J., said (*o*) :

"This is not a reservation of any part of the thing demised, it is not a reservation of any part of the ore, or of the mineral in its natural and primitive state : but of something of a quality, name, and character entirely different ; of a metal produced from that mineral by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter—viz., with coal or charcoal—and by the effect of fire upon both a metal is obtained which is to be considered, for this purpose, at least, as entirely different from either of the two, and rather as a manufacture of art and labour resulting from the use and application of these materials than the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants."

(*d*) (1762), 3 Burr. 1341.

(*e*) (1813), 1 M. & S. 612.

(*f*) *Cf. Morgan v. Crawshaw* (1871). L. R. 5 H. L. 304 ; *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 599.

(*g*) 37 & 38 Viet. c. 54 : see Appendix II., *infra*.

(*h*) (1816), 5 M. & S. 139.

(*i*) (1776), 2 Cowp. 451.

(*k*) (1789), 3 T. R. 480.

(*f*) (1840), 11 A. & E. 677.

(*g*) (1842), 2 Q. B. 862.

(*n*) (1813), 1 M. & S. 612.

(*o*) 5 M. & S., at p. 143.

In *R. v. Todd* (*p*) the lessees of certain lead mines covenanted to yield, pay, render, and deliver unto the lessor one-fifth part of all the lead and other ore “won, wrought, raised or gotten out of the demised premises well and sufficiently cleansed, dressed, washed, and made merchantable and fit for the smelting-mill at the cost of the lessees.” The ore before delivery under the lease had to undergo a very laborious and expensive process in being bruised, dressed, and made merchantable and fit for smelting, by which all foreign substances were separated from the ore, but the character of the ore was not otherwise altered. It was contended that the case was governed by *R. v. Pomfret* (*q*): but the court, without giving reasons, held that the lessor was rateable as an occupier apparently on the ground that he received a part of the soil, which had not lost its primitive natural character by the removal of the other parts under the processes carried out by the lessees.

Option to take dues in kind or in money.—The cases above cited having established that a lessor of mines (other than coal mines) was rateable if he received dues in kind, but was not rateable for a money rent, a difficulty arose where the lease gave the lessor the option of taking either dues or money. In *R. v. St. Austell* (*r*) the lessor was held rateable, although, in the exercise of his option, he had always received a money rent instead of dues in kind: but although the point was referred to in the argument, the court in their judgments seem to have ignored the fact that their decision involved at least an apparent conflict with the cases which they professed to follow. For, in *R. v. Baptist Mill Co.* (*s*), the lessors were held to be occupiers because (in the language of Lord ELLENBOROUGH, C.J.) they received “a specific portion of the produce of the land, or, in other words, land itself: . . . part of the solid mass of the ground”; or, as LE BLANC, J., said, “Where a person receives, without risk, part of the produce extracted from the bowels of the earth, he is an occupier of land: but where he merely receives a rent, or money payment, there the court has held, as in *R. v. Bishop of Rochester* (*t*), that he is not an occupier.” And in *R. v. Pomfret* (*u*) Lord ELLENBOROUGH, C.J., in delivering the judgment of the court, drew a distinction between a reservation of rent and a reservation of part of the thing demised. But in *Van Mining Co. v. Llanidloes* (*v*), *R. v. St. Austell* (*y*) was accepted as a binding decision that it makes no difference to the rateability of the lessor whether dues are reserved

(*p*) (1840), 12 A. & E. 816.

(*r*) (1822), 5 B. & Ald. 693, *supra*, p. 385.

(*s*) (1813), 1 M. & S. 612, *supra*, p. 384.

(*t*) (1810), 12 East, 353.

(*u*) (1816), 5 M. & S. 139, *supra*, p. 386.

(*q*) (1816), 5 M. & S. 139.

(*v*) (1876), 1 Ex. D. 310.

(*y*) (1822), 5 B. & Ald. 693.

simply in kind, or with an option to receive their value in money. It must be remembered that under s. 13 of the Rating Act, 1874 (z), upon which *Van Mining Co. v. Llanidloes* was decided, that Act does not apply to mines “of which the royalty or dues are for the time being wholly reserved in kind”: the principle laid down in *R. v. St. Austell* is, therefore, still to be taken as good law upon this point.

Rateability, how far dependent on profit.—Mines are occupied only for the profit that can be made out of the occupation; and if there be no profit made, there can be nothing to rate. But if the mining adventurers in occupation make a profit, they are liable to be rated, even though the whole of the profit is swallowed up by the rent which they pay to their lessor (a). The fact that a profit is made is enough to create liability, and the court cannot inquire into the question whether the tenants have made an unprofitable bargain with their lessors (b). In other words, if profit be made, it is immaterial whether that profit goes into the pockets of the actual occupier or not (c). But the fact that the landlord receives a profit in respect of the mine, in the form of rent, does not render the occupier liable to be rated. Thus, in *R. v. Bedworth* (d), a coal mine, having been exhausted, had ceased to be worked, but the lessee remained bound by his covenant to pay the rent reserved to his landlord: it was held that the lessee was not liable to be rated, “because the occupier was rateable only for the concurrent annual value during the period for which the rate was made; and when the thing occupied no longer afforded any such concurrent value, the subject-matter of the rating was gone.” It is submitted that the court might also have decided in favour of the lessee on the ground that, having ceased to work the mine, he was no longer in occupation of it.

Both *R. v. Bedworth* and *R. v. Parrot* were decided before the passing of the Parochial Assessments Act, 1836 (e), which by s. 1 made the rent which a tenant may reasonably be expected to pay the measure of “net annual value”; but it is clear that those cases are still good law. For in considering what rent a hypothetical tenant may be expected to give, it is immaterial whether

(z) 37 & 38 Vict. c. 54: see Appendix II., *infra*.

(a) *R. v. Parrot* (1794), 5 T. R. 593.

(b) *Per* Lord KENYON, C.J., 5 T. R., at p. 596.

(c) *Cf. R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276, *supra*, p. 248.

(d) (1807), 8 East, 387. The accuracy of the passage cited was questioned by BLACKBURN, J., during the argument in *Staley v. Castleton* (1864), 33 L. J. M. C. 178, at p. 180; but the dictum is not repeated in the judgment, and it is submitted that it cannot be supported. It does not appear in other reports of the same case; see 5 B. & S. 505; 10 L. T. 606; 12 W. R. 911; 28 J. P. 710; and the decision in *R. v. Bedworth* has been recently confirmed in *Farnham Flint and Gravel Co. v. Farnham Union*, [1901] 1 Q. B. 272, at p. 284.

(e) 6 & 7 Will. 4, c. 96: see Appendix II., *infra*.

the rent which the actual tenant has contracted to give exhausts all his profits or not. And if a mine is worked out, it is impossible to expect that any tenant will give any rent for it as a mine, and the rateable value is reduced to nothing.

Pumping-engines in a mine which cannot be worked.—In *Tyne Coal Co. v. Wallsend Overseers* (*f*), the appellants were lessees of a coal mine, which had been drowned out, and which for twenty years had not been worked. They constructed engines and boilers in buildings made to contain them, together with reservoirs and a railway, on land taken for the purpose. The railway was used for conveying coal to the colliery to work the engines which were used for pumping out the water. The appellants were paying an annual rent for the mine, and annual compensation for the use of the surface lands; and they admitted liability to be rated for the lands, but disputed their liability in respect of the colliery, and of the plant, engines, boilers, and railway. There appeared to be no immediate prospect of the mine becoming valuable, but it was argued for the respondents that although the mine was unproductive and therefore not rateable, the machinery and buildings (being used, not for working the mine, but for clearing it of water) were beneficially occupied. And it was suggested that if a contractor had contracted to pump out the mine, and had taken the engines and buildings for the purpose of his contract he would be rateable in respect of his occupation. The court, however, held that the appellants were not rateable except in respect of the lands. GROVE, J., said :

“With the exception of the land itself, the rateability of which is admitted, there is nothing to rate. . . . The works in their present state are absolutely valueless. But it is said somebody might give something for them, namely, a contractor who might contract for draining the mine. I do not think that that is the principle upon which rating should proceed. A building is not to be rateable because it might be convenient for such contractor to occupy, not for the purpose of having a beneficial use of it for himself or family, but for the purpose of being paid for his labour in doing something for the land. He would not be occupying as a tenant, but merely as a contractor for the purpose of performing his contract.”

The hypothetical tenant's rent must be fixed on the assumption that the existing conditions would continue (*g*), and if this assumption be made in the case of a mine that cannot be worked, no tenant could be found to give a rent.

The cost of “planting” the mine.—In *R. v. Attwood* (*h*), a case decided a few years before the passing of the Parochial

(*f*) (1877), 46 L. J. M. C. 185.

(*g*) Compare the judgment of BLACKBURN, J., in *Staley v. Castleton* (1864), 33 L. J. M. C. 178, at p. 182, *supra*, p. 160 : *et vide* pp. 162, 163.

(*h*) (1827), 6 B. & C. 277.

Assessments Act, 1836, it was held that a person who was both owner and occupier of a coal mine should be rated at such sum as it would let for, and no more ; and the court accordingly amended a rate in which an owner and occupier had been rated for the full value of the produce of the mine after deducting working expenses. It is obvious that a tenant would expect some profit for himself, and would not give as rent the net value of the whole of the coal which he expected to raise.

But in *R. v. Attwood* it was also contended that the subject-matter of the rate (viz., the coal) was part of the realty, and, not being renewable, would in a few years be exhausted, and that consequently the rate should be based on the interest on the value, and not on the capital value itself ; and, further, that a deduction ought to be made in respect of money expended in making the mine profitable (called “planting the mine”), and that until that money had been repaid the mine had not become productive. But both these claims were disallowed. ABBOTT, C.J., said (*i*) :

“The legislature has expressly made coal mines rateable, and they must be rated for what they produce, viz., the coal. Slate quarries and brick-earth are also exhausted in a few years, but nevertheless the rate is always imposed upon that which is produced. The other argument was that the rate could not be imposed until the expense of planting the mine had been recouped. But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state and in building a house. The attempt to distinguish them is perfectly novel, and if a house is to be rated as soon as built and occupied, it must follow that a coal mine is rateable as soon as it is set at work and produces coals, although it may happen that the expense of sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm, or a house, in which cases the tenant is rateable for the improved value.”

The principle laid down in this judgment (as to the expenses of planting the mine) is now adopted and made perfectly clear by the Parochial Assessments Act, 1836 (*k*), under which Act the rateable value is not the profit which the actual occupier (whether owner or lessee) makes, but the rent which a tenant may reasonably be expected to pay.

It must, of course, be noticed, that although the lessee of a coal mine is rateable as soon as coal is raised, before the expense of planting the mine is recouped, he is not rateable while he is sinking the shaft in the hope of reaching the coal (*l*). The mine

(*i*) 5 B. & C., at p. 282.

(*k*) 6 & 7 Will. 4, c. 96. : set out in Appendix II., *infra*. It must be noticed that coal mines are not within the special provisions of the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 7 : set out in Appendix II., *infra*.

(*l*) *Per* BLACKBURN, J. : *Staley v. Castleton* (1864), 33 L. J. M. C. 178, at p. 182 ; *supra*, p. 160.

is then in a state analogous to that of a house in course of construction, and no tenant would give a rent for it as long as it continues in that condition.

In *R. v. Lord Granville* (*m*), an attempt was made to review the decision in *R. v. Attwood* (*n*), and to contend that the lessee of a coal mine ought not to be rated (over and above the royalty payable under the lease) for the value of the mine as increased by the erection of engines and a railway, etc., at the expense of the lessee; but the court rejected the contention. BAYLEY, J., said:

"If the owner had occupied the mine he would have been liable to be rated according to the improved value of the property; and where the owner of a mine fixes an engine, or otherwise, by expenditure of his capital, raises the value of his property, he will be rateable for the value of that property so improved by his expenditure. If it be leased to a tenant who is to incur the same expenditure of erecting an engine, the owner will receive a less royalty (*o*); but as a greater quantity of coal will be raised, the tenant will be thereby remunerated for his expenditure, and I think the tenant, being the occupier, is liable to be rated for such improved value."

The decision was given before the passing of the Parochial Assessments Act, 1836, but it correctly states the law under that Act. The erection of engines and a railway formed an addition to the rateable hereditament, for which the hypothetical tenant might be expected to give an additional rent.

The method of ascertaining the rateable value of coal mines.—The special provisions relating to tin, lead, or copper mines, contained in the Rating Act, 1874 (*p*), do not apply to coal mines. The rateable value of the latter must therefore be calculated under the Parochial Assessments Act, 1836, s. 1 (*q*), by estimating the rent which a tenant might reasonably be expected to pay. There is therefore no difference *in principle* between the measure of the rateable value of a coal mine and the measure of the rateable value of an acre of agricultural land. The difficulty lies in the application of the general principle to the peculiar circumstances affecting the working and letting of coal mines.

A coal mine is (to say the least) very seldom let to a yearly tenant under the simple conditions supposed in the definition of net annual value contained in s. 1 of the Parochial Assessments Act, 1836; and it has been held to be permissible to ascertain the rateable value (as is done in the case of gasworks and railways) by deducting from the actual yearly receipts of the occupier the

(*m*) (1829), 9 B. & C. 188.

(*n*) (1827), 6 B. & C. 277.

(*o*) *I.e.*, he would take less than he would if the engine were erected at the expense of the landlord.

(*p*) 37 & 38 Vict. c. 54, s. 7: see Appendix II., *infra*.

(*q*) 6 & 7 Will. 4, c. 96: see Appendix II.

working expenses, allowances for tenant's capital, etc. (*r*) : and this certainly appears to be the fairest method of rating property of this character (*s*). From the gross earnings must be deducted all the tenant's working expenses, including tenant's rates and taxes (unless they are deducted at a later point in the calculation) : from the net receipts thus ascertained, which represent the whole of the profit divisible between landlord and tenant, there must be deducted the tenant's share, consisting of interest on capital invested, tenant's profits, and an allowance for risks and casualties. The remainder, after deducting the tenant's share, will represent the gross estimated rental payable to the landlord ; and a question of some difficulty arises as to the proper deductions to be made therefrom.

Renewal of mines, brickfields, and similar property.—The definition of net annual value in the Parochial Assessments Act, 1836, s. 1 (*t*), directs a deduction of "the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain the hereditaments in a state to command the rent." Where in the rate book the same amount is set down both for the gross estimated rental and the rateable value, the appellant is entitled to accept the gross and deduct therefrom the cost of repairs, etc., in order to arrive at the rateable value (*u*). The cost of keeping in repair the permanent main roads and airways are included among the "expenses necessary to maintain the hereditament," and not among the tenant's working expenses (*r*). As to the cost of ordinary repairs and insurance, there may be some difficulty in ascertaining the amount, though the right to the deduction is clear. But in the case of buildings and most other hereditaments, a renewal fund is allowed, because, however carefully repairs may be carried out, there comes ultimately a time when the entire hereditament must be renewed, and not merely repaired, if it is to continue to command the rent. But in the case of a building, the object of the tenant is, or should be, to use the landlord's property during the tenancy, and at the expiration of the term to deliver the hereditament up to the landlord diminished in value as little as possible. But the object of a mining lease is that the tenant may not merely use, but use up, the landlord's property,

(*r*) *Denaby and Cadeby Colliery Co. v. Doncaster Union* (1898), 78 L. T. 388.

(*s*) *Cf. R. v. Westbrook* (1847), 10 Q. B. 178, *infra*, p. 397 : a decision as to the rating of brickfields. See also *R. v. Abney Park Cemetery Co.* (1873), L. R. 8 Q. B. 515, *infra*, p. 407.

(*t*) 6 & 7 Will. 4, c. 96 : see Appendix II., *infra*.

(*u*) *Denaby and Cadeby Colliery v. Doncaster Union* (1898), 78 L. T. 388 ; *cf. Horton v. Walsall Union*, [1898] 2 Q. B. 237 ; *infra*, p. 593.

(*x*) *Brown & Co. v. Rotherham Union* (1900), 64 J. P. 580. It is submitted that the headnote in that case is wrong in extending the decision to repairs of working places and temporary roads. The decision seems to be limited to the matters specified in paragraph 6 of the special case—viz., repairs of permanent main roads and permanent main airways.

and at the expiration of the term may deliver up the hereditament diminished as much as possible in value. The ultimate renewal of a coal mine when exhausted is impossible, and it is therefore difficult to see how it is possible to deduct from the gross rent payable to the landlord a sinking fund to provide for the maintenance of the hereditaments in a state to command the rent (*y*). In *R. v. Westbrook* (*z*), relating to brickfields (which are, like coal mines, exhausted in the working), the court in effect refused to allow any sinking fund for the ultimate renewal of the brickfields (*a*).

As a matter of principle there is apparently no difference between the permissibility of a deduction for a renewal fund in the case of a house and in the case of a mine or brickfield. It is true that the tenant of a dwelling-house may not intend or desire to destroy the landlord's property, but the inevitable result of his occupation is to destroy it. In the case of a mine or brickfield, the tenant does in one sense intend or desire to destroy the hereditament: his object is to make the most of it, and that object cannot be carried out without the destruction of the hereditament as a mine or brickfield. It is true that in the case of a house, the destruction is gradual, and ultimate renewal is possible; whereas in the case of a mine or brickfield, destruction is rapid and ultimate renewal is impossible: but the nature of the destruction is the same in both cases. At the same time, it is hardly possible to see how a deduction for ultimate renewal can be allowed, *e.g.*, in the case of a brickfield which is worked out as a brickfield in the first year's working. In that case the fund to replace the value of the brick-earth would exhaust the whole of the year's rent, and leave no rateable value. The result, however anomalous it may be, is that in the case of coal mines, brickfields, and similar property, where the sinking fund for ultimate renewal should be exceptionally large, no allowance for that sinking fund is made by way of deduction from the gross estimated rental.

Working expenses of a coal mine.—It may not be very easy to draw the line very clearly between the two classes, but it is plain that there are two entirely different classes of expenses incurred in mining operations. The expense of sinking a shaft in order to get down to the carboniferous strata is an expense on work which

(*y*) A sinking fund for the renewal of buildings or machinery can, of course, be calculated: what is said above has reference to the coal itself.

(*z*) (1847), 10 Q. B. 178: *vide infra*, p. 397.

(*a*) In *R. v. Attwood* (1827), 6 B. & C. 277, it was argued that it was inequitable to base the rate on royalties or rent paid not merely for the use but for the destruction of the hereditament. As the case was decided before the passing of the Parochial Assessments Act, 1836, it can form no guide to the construction of the Act. But it is noticeable that no deduction from the royalties actually paid (on the ground that the hereditament was being consumed) was allowed by the court.

increases the value of a mine, both to the landlord and to the tenant from year to year: the expense subsequently incurred in working all the most easily accessible coal is an expense on work the effect of which is to diminish the value of the mine to the landlord and probably also to the tenant. Expenses of the latter class must be regarded as tenant's expenses, and must be deducted from the profits made in estimating the value. Expenses of the former class are landlord's expenses, and no deduction must be made from profits on account of such expenses. But the cost of maintaining the permanent roads and airways (when made) is part of the "repairs," or expenses necessary to maintain the hereditament in a state to command the rent, within s. 1 of the Parochial Assessments Act, 1836, and is not part of the tenant's working expenses (*b*). For such maintenance a deduction must be made; but as the deduction constitutes the difference (or part of the difference) between the gross estimated rental and the net annual or rateable value, a rate in which the same sum is set down both for the gross estimated rental and the rateable value cannot be supported (*c*). Again, where they are incurred by a lessee, some proportion of, or percentage on, the landlord's expenses must be added to the royalties or rent paid by the lessee, in order to arrive at the hypothetical tenant's rent; for it is obvious that the hypothetical tenant would give higher royalties or rent than the actual lessee, if (as must be assumed to be the case) the landlord bears the burden of all expenditure necessary to fit the mine for occupation by a tenant from year to year. The expenses of sinking a shaft may be compared to the cost of building a house (*d*), and it is obvious that the occupier of land, with a house upon it, can claim no deduction in respect of the cost of building the house. Or the case may be put in another way: suppose the A. Colliery Company purchases the freehold of an unopened mine for 100,000*l.*, and spends 10,000*l.* in sinking a shaft, but before raising a single ton of coal, sells the property to the B. Colliery Company for 110,000*l.* It is obvious that the B. Company on working the mine cannot (for the purpose of calculating rateable value) claim any deduction in respect of 10,000*l.*, part of the purchase money, which represents the value and the cost of the shaft. So, too, it is plain that if the A. Company had not sold but had proceeded to work the mine, they could have claimed no deduction in respect of the cost of the shaft (*e*).

(*b*) *Brown & Co. v. Rotherham Union* (1900), 64 J. P. 580.

(*c*) *Brown & Co. v. Rotherham Union*, *supra*; *cf. Denaby and Cadeby Colliery v. Doncaster Union* (1898), 78 L. T. 388.

(*d*) See *R. v. Attwood* (1827), 6 B. & C. 277; *supra*, p. 390.

(*e*) In *Coltney Iron Co. v. Black* (1881), 6 App. Cas. 315, it was held that, for the purposes of income tax, no deduction could be made in respect of expenses in sinking pits exhausted by the year's working. Valuations for purposes of income tax and of poor rate are not altogether *in pari materia*, but are still analogous: see Lord BLACKBURN'S remarks, *ibid.*, p. 330.

Apportionment of value between several parishes.—In *R. v. Foleshill* (*f*), a stratum of coal lay in the two parishes of Foleshill and Exhall, and was worked in both, but all the coal was brought to the surface by a shaft in the former parish. It was held that in rating the proprietor for the coal mine, engines, and machinery in Foleshill, he could not be assessed in respect of coal gotten in Exhall, but brought to the surface in Foleshill.

This decision will be seen to be clearly right, if it is borne in mind that the rate is upon the occupier in respect of the coal mine occupied, and not upon the profits made. It may be (as was apparently noticed by WILLIAMS, J., in the case cited) that the underground workings in Foleshill would possess some additional value in consequence of the facilities afforded for working the coal in Exhall, so that (if there were two owners) the owner of the coal in Exhall would pay for a wayleave in Foleshill : and for this additional value the owner in Foleshill would be rateable.

It may be useful to notice the suggestion made in the argument in *R. v. Foleshill* that, if a coal mine extended into strata lying under the sea (*g*), the produce of these strata could not be exempt from poor rate. Here again there is a fallacy arising from the substitution of “the produce” of the coal mine for the coal mine itself, as the subject in respect of which the rate is imposed. The occupier of a mine under the sea clearly cannot be rated for the mine because it is not within any parish. But if there is a shaft within the parish communicating with workings outside the parish, it may be that the land in which the shaft is sunk acquires some additional value because of the facility which it affords for working the mine (*h*) : just as land adjoining a public highway has an additional value because of the facilities for trade which the highway affords : and such land has a higher rateable value because of the trade, although the profits of trade are not in themselves rateable (*i*).

The question is, what rent will be given for the land in which the shaft is sunk, by an occupier who will have to pay (either in rent or in purchase money) for the mine? If there are many sites suitable for a shaft, the value of any site will be very little (if at all) greater than the value of the same land for ordinary purposes (*k*) ; but if there is only one site suitable for a shaft, it may be that a tenant would give a considerable sum for it.

(*f*) (1835), 2 A. & E. 593. The case was decided before the passing of the Parochial Assessments Act, 1836, but that Act makes it clear that the same decision must be given now if the question arises again.

(*g*) As to the extent of the parish boundary on the sea-shore, see the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 27, in Appendix II., and p. 347, *supra*.

(*h*) Compare *New River Co. v. Hertford Union*, [1902] 2 K. B. 597 ; *supra*, p. 269.

(*i*) Cf. *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18 ; *supra* pp. 190, 191.

(*k*) Compare the remarks as to the rating of lighthouses and the dues earned thereby, *supra*, pp. 330—333.

The Rating Act, 1874.—This Act (which is set out in Appendix II., *infra*), overrules or renders obsolete the series of cases (*l*) in which it had been held that the express mention of coal mines in the statute. 43 Eliz. c. 2, amounted to an enactment that other mines should not be rated. The Rating Act, 1874, s. 3, extends the Statute of Elizabeth to mines of every kind not mentioned therein; and s. 10 enacts that “the hereditaments to which the Poor Rate Acts are extended by this Act, and which are thus made rateable to the relief of the poor, shall be rateable to all local rates in like manner as if the Poor Rate Acts had always extended to such hereditaments.” But s. 13 provides that “nothing in this Act shall apply to a mine of which the royalty or dues are for the time being wholly reserved in kind, or to the owner or occupier thereof.” Consequently the cases deciding that a lessor of mines receiving dues wholly in kind is rateable must still be considered as good law (*m*). In *Van Mining Co. v. Llanidloes* (*n*) it was held, on the authority of *R. v. St. Austell* (*o*), that where a lease reserved a royalty in kind, but gave the lessor the option of taking the value in money, which option had, in fact, been exercised, the case was not within the Act.

Under s. 7 of the Rating Act, 1874 (*p*), in the case of a tin, lead, or copper mine to which the Act applies, the amount of dues or rent actually paid by the tenant in one year is made the basis of the valuation in the next year: and in the case of a mine occupied under a lease granted wholly or partly on a fine, or occupied by the owner, or a mine to which the foregoing provisions of the section do not apply, the gross and rateable values are to be taken to be the annual amount of rent and dues “at which the mine might reasonably be expected to let without fine, *on a lease of the ordinary duration* according to the usage of the country, etc.” It must be remembered, not only that the Act does not apply at all to a mine of which the royalty or dues are for the time being wholly reserved in kind, but that s. 7 of the Act applies only to tin, lead, or copper mines, and, therefore, that the rateable value of a coal mine is to be ascertained under the Parochial Assessments Act, 1836, and not under the Rating Act, 1874 (*q*).

The Rating Act, 1874 (*p*), by s. 7, defines how much is to be included under the term “mine,” and the effect of the section was considered in *Snailbeach Mine Co. v. Forden Guardians* (*r*). Where part of the “mine,” as thus interpreted, is situate in another

(*l*) *Vide supra*, pp. 379, 380.

(*m*) The cases are collected, *supra*, pp. 384—388.

(*n*) (1876), 1 Ex. D. 310.

(*o*) (1822), 5 B. & Ald. 693; *supra*, p. 387.

(*p*) See Appendix II., *infra*.

(*q*) Compare *Brown & Co. v. Rotherham Union* (1900), 64 J. P. 580.

(*r*) (1876), 35 L. T. 514.

parish, a deduction must be made for the rateable value of that part from the rateable value of the whole "mine."

By s. 8 of the same Act, in the case of leases existing at the commencement of the Act, the tenant is enabled to deduct half of the rates from the rent or royalty payable by him, unless he has "specifically contracted" to pay the rate in the event of the abolition of the exemption of mines from rateability. As to what amounts to a "specific contract" within the section, see *Chaloner v. Bolekow(s)* and *Duke of Devonshire v. Barrow Hematite Steel Co.(t)*.

Brickfields: R. v. Westbrook.—The rating of brickfields was fully considered in *R v. Westbrook* and *R. v. Everist(u)*, two cases which were argued separately, but decided together. In the former case, Westbrook took a lease of a little more than ten acres of land, for the purpose of getting clay to make bricks, for a term of seven or fourteen years, or till the earth was dug out; and had to pay a rent of 20*l.* without reference to the use made of the land, and in addition a royalty of 1*s.* 6*d.* for every 1,000 bricks moulded. There were on the land four brick-making "stools," each capable of making about 750,000 bricks in a year, and in the year before the making of the rate, 2,800,000 bricks were actually made, and sufficient clay remained to make 12,000,000 bricks. It was agreed that the value of the land (as agricultural land) was 2*l.* 6*s.* an acre, and the appellants in the first place contended that it ought not to be rated at more than that amount. But the rate was made by taking the rent actually paid, and adding thereto a royalty of 1*s.* 6*d.* per thousand on 3,000,000 bricks, the maximum number which the four stools were capable of producing, subject, however, to a deduction of 10 per cent. for bricks wasted, and a further deduction of 33 per cent. for the breeze, ashes, and other foreign materials used by the brickmakers with the clay, and purchased by them for the purpose, some of the materials being brought from a considerable distance. The sessions confirmed the rate, thus in effect holding that the royalty might be regarded as part of the rent; but they also found that the rent, which on taking a lease(*v*) with liberty to consume the clay (and without any liability to pay a royalty) any tenant would have been willing to pay was 10*l.* per acre only. The appellant further contended that the royalty was not a rent at all, but was a sum paid for the

(*s*) (1878), 3 App. Cas. 933.

(*t*) (1877), 2 Q. B. D. 286.

(*u*) (1847), 10 Q. B. 178; 16 L. J. M. C. 87.

(*v*) It appears from the preceding paragraph, in the case describing the lease held by Westbrook, that the finding of the sessions supposed a lease for seven years, *subject to determination sooner on the clay being exhausted*. Such a lease would resemble the tenancy from year to year supposed by the definition of "net annual value" in the Parochial Assessments Act, 1836, s. 1, more closely than an ordinary lease for seven years.

consumption of the land itself, and, in part, for foreign matters mixed with the land ; and that no allowance had been made for the renewal of the clay when exhausted. All these contentions were rejected by the court, but it was held that the sessions having found that a tenant would give a rent of 10*l.* per acre only, that sum was the true criterion of rateable value. Lord DENMAN, C.J., in the course of his judgment, said (*y*) :

“ It is objected by the appellants that . . . it is altogether wrong in principle to consider the royalty as rent ; and this appears to be founded mainly on this, that it is a sum paid, not in respect of the renewing produce of the land, but of a portion of the land itself, and that not consumed by slow degrees, and to be exhausted at the end of a long period, as is the case with a coal mine, under which circumstances it was admitted that it might be treated as produce, but in such large proportions that the whole would in a few years be exhausted. It does not appear to us that the circumstance of a more or less rapid consumption can make any difference in the principle. The rate is always imposed with reference to the existing value ; whether temporary or enduring is immaterial. A case was supposed of a brickfield worked out in less than a year to meet the demand of some enormous contract for a public work : the consequence would be that the land would have a very much increased value for the year, and it would be only reasonable that it should bear an increased rate for that year ; in the following year its value might sink almost to nothing, and the rate ought to fall proportionately, even to nothing if the brick-earth being exhausted, the land, like an exhausted coal mine, should become entirely unproductive (*z*). . . . We are brought, then, to the conclusion that the parish officers have done right in considering the royalty as a portion of the rent ; and we see no objection to the mode by which they arrive *primò facie* at the conclusion that the amount of royalty reckoned in the rate will be paid in the year for which the rate is made.

“ Still, it must always be remembered that the ultimate question is that propounded by the statute : and, therefore, the amount which has been paid, or which it is reasonable to infer will be paid, is only evidence, not the fact itself to be ascertained. When, therefore, the case came to the sessions, it was open to the appellants to prove such uncertainty in the market or such circumstances affecting the process of making, as showed that the parish officers had done wrong in concluding from such a quantity made, or expected to be made, that the land might be reasonably expected to let from year to year at a rent measured by that quantity : such evidence would have raised a question of fact for the sessions, and they would have had upon the whole to sustain or reduce the amount of the assessment. It may well be that although at the end of the year the lessee has made so many bricks that he can afford to pay 150*l.* in royalty to his landlord he could not prudently, at the beginning of the year, contract at all events to pay more than 100*l.* : and, if so, the latter rather than the former will be the sum at which the land may reasonably be expected to let from year to year. And this is what we understand the sessions to mean in *Westbrook's Case* by

(*y*) 10 Q. B., at p. 203.

(*z*) See the remarks on this passage in *Farnham Flint and Gravel Co. v. Farnham Union*, [1901] 1 K. B. 272, at pp. 284, 285 ; Ryde & Konstam's Rat. App. (1894—1904) 217, at p. 230.

their special finding: the parish officers estimate the rent at a supposed amount of bricks actually made, and the royalty then payable on such amount: from this they make such deductions as reduce the rateable value to 159*l.* 10*s.*, but the sessions say that, placing the tenant exactly on the same footing as to the incidents of his occupation, but calling on him to say beforehand what rent he would pay per acre for it, he could not be expected to give more than 10*l.* per acre, which on the whole would amount to a little more than 100*l.* (*a*). This latter appears to us to be the true criterion rather than the former."

In *R. v. Everist (b)*, which was decided with *R. v. Westbrook*, and in which the facts were very similar, the rate (which the sessions confirmed) had been based upon the rent and royalties actually paid by the appellant to his landlord. The appellant contended at the sessions that the land should be rated not higher than ordinary agricultural land, or at all events not higher than the best garden ground in the parish, but both these contentions were abandoned in the Queen's Bench. The sessions had not found what rent a tenant of the land would give (as had been done in *R. v. Westbrook*), and asked the Queen's Bench what was the net annual value of the land in question. Lord DENMAN said:

"Neither of the appellants' modes [of valuation] is correct, nor was contended so to be: they were in effect to rate land occupied in one mode as if it were occupied in another; the modes producing different rates of profit, and commanding different amounts of rent; than which nothing can be more unreasonable. But, on the other hand, although the sums paid are in the nature of the rent, it does not follow that they *must* form the basis of the rate, in the sense of fixing its amount. The true question is that which the sessions ask, but which they must answer for themselves, by finding upon evidence, according to the principles we have laid down, what, in the words of the statute, is the rent at which the land may 'reasonably be expected to let from year to year,' remembering the purposes to which it is to be applied, and the privileges which the tenant will enjoy under his contract, and by reason of his occupation, and after making all the deductions specified in the statute."

Rateable value measured by rent, not profits.—The judgment in *R. v. Westbrook (c)* is important, not merely as showing how brickfields are to be rated, but as laying down general principles. Under 43 Eliz. c. 2, the rate is imposed on the occupier of land, and under the Parochial Assessments Act, 1836 (*d*), the measure of

(*a*) In the headnote to the report of the case in 10 Q. B., at p. 178 (but not in the Law Journal report), it is wrongly stated that the tenants' rates and taxes were to be deducted from the rent of 10*l.* an acre. That was the appellant's contention, but it is not supported by the judgment, and is, moreover, obviously untenable. The rateable value is no doubt a rent free of all usual tenants' rates and taxes; but under a lease for seven years the tenant would pay the rates, etc., and the rent which he would pay to the landlord would be free of all tenants' rates and taxes. There is, therefore, no need to make any deduction from the rent under that head.

(*b*) (1847), 10 Q. B. 178; 16 L. J. M. C. 87.

(*c*) (1847), 10 Q. B. 178; 16 L. J. M. C. 87.

(*d*) 6 & 7 Will. 4. c. 96, s. 1, set out in Appendix II.

the value of the land is the rent which a tenant may be expected to give for it. Neither Act says anything about the produce of land, or about the profits which the tenant makes, or might make. If the rate were on the produce of the land, then undoubtedly it would have been right to measure the annual value by the number of bricks actually made. On the other hand, the number of bricks actually made, and the amount of the royalties paid in the past, were at least *prima facie* evidence of what a tenant might be reasonably expected to pay in the future; and were certainly better evidence than the maximum number of bricks which the "stools" were capable of producing, and the royalties payable for such a number. Suppose that, from strikes in the building trade, or similar causes, the occupier found it useless to make more than half the maximum number of bricks which the "stools" were capable of producing, there being no market for bricks. No tenant could reasonably be expected to give a rent calculated with reference to the maximum number of bricks which he could make, if he could not sell more than half of that number. It may, however, be said that the rateable value is not affected by the amount of business done by the occupier (*e*): that is true in the case of shops, offices, or farms, because where one man fails, another may succeed, and if the actual occupier cannot pay the rent, another can readily be found to do so. But in the case above suggested, of a strike affecting the demand for bricks generally, if the actual occupier (in consequence of the strike) could not find a market for the maximum number of bricks which might be made, that fact is at least some evidence that other tenants of the same brickfields could not do so: and it is some evidence to show that no tenant could reasonably be expected to pay a rent calculated with reference to the maximum number of bricks.

Chalk-pits.—Here, too, the measure of rateable value is to be found, not in the profits which the tenant makes, but in the rent (whether in the form of royalties or otherwise) which he would be willing to pay. In *R. v. North Aylesford Union* (*f*), the appellants were occupiers of a chalk-pit, and of cement works adjoining thereto: on an appeal against the rating of the chalk-pit, the respondents sought to give evidence of the profits made by the appellants from the use of the chalk in the manufacture of cement. The sessions rejected the evidence, and the Queen's Bench held

(*e*) Compare the illustration given by BLACKBURN, J., in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *supra*, p. 168; and the remarks of the same judge in *R. v. North Aylesford Union* (1872), 37 J. P. 148; 26 L. T. 618, *infra*, p. 401.

(*f*) (1872). 37 J. P. 148. The same case is reported *sub nom. R. v. Aylesford Union*, 26 L. T. 618. The judgment in that report is somewhat different from, and (in the writer's opinion) less accurate than, the report in 37 J. P. 148, and the latter report has been adopted in the text.

that they were right in so doing. It appeared that there were several other chalk-pits in the neighbourhood, producing chalk of about the same quality as that of the appellants'; but the chalk from those pits was used only for ballasting ships, and it was admitted that greater profit could be made of chalk by making cement than by using it for ballast. The respondents contended that the profits of the cement works adjoining the appellants' chalk-pit, showed what rent a tenant could afford to pay, and that the connection with the cement works increased the value of the chalk-pit to the appellants. BLACKBURN, J., said :

"The rateable value of the chalk-pit is the value which a tenant would be expected to give for it. That value involves two elements : first, what would a tenant make by it, and what would he get equally good chalk for in the neighbourhood (*g*). No tenant gives all that he could afford to give, and the true test is not what he could afford to give, but what a tenant would be likely to give who took the pit from year to year. It is not the profits a man makes that make the difference, for, whether he gains or loses in his trade, the rateable value is the same."

It must be noticed that this case is strictly in accordance with *R. v. Westbrook (h)*, for in that case the court took into consideration, not what the tenant of the brickfields made for himself, but what he paid to his landlord. It must further be noticed that in *R. v. North Aylesford Union*, the court did not (by refusing to admit evidence of the profits of the cement works) shut out from consideration the additional value which the proximity of those cement works gave to the chalk-pits. For the sessions had before them evidence of the rent which the appellants had agreed to pay under a lease of the chalk-pit, and of the fact that the landlord when he fixed the rent knew that the chalk was to be used in the manufacture of cement ; so that, in fixing the rent paid, the special value of the chalk-pit to the appellants was in fact taken into account. It must also be remembered that where land has a special value to the owner of adjoining land, its position *may* prevent it from being valuable to other persons. In that case the landlord must not ask too high a rent, or he will deter the only possible tenant, or the most likely tenant, from taking his land : the rent is ultimately fixed by the "higgling of the market," which determines the rateable value.

Diminishing value of brickfields and similar properties.—

In the case of land used for brick-making, for digging coprolites or gravel, or for other similar purposes, where the value of the minerals extracted is rapidly exhausted, a difficulty arises in applying the definition of "net annual value." For where the mineral

(*g*) Compare the judgment of the same judge in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, *supra*, p. 168.

(*h*) (1847), 10 Q. B. 178, *supra*, p. 397.

is exhausted in each plot of land in a year or less than a year, the question arises whether the land is to be rated at the full yearly value during the whole of the year, or at the value of the land at the date of the rate which may happen to be made when great part of the value has been exhausted. On this question two cases have been decided, in each of which there was a difference of opinion among the judges.

Land containing coprolites.—In *R. v. Whaddon (i)*, the appellants entered into an agreement with a landowner, whereby they were to have the right of digging coprolites over a large area of land, paying 115*l.* for every acre, and making a minimum payment of 1,000*l.* a year, and were to restore the surface soil and level the land after the coprolites had been dug out (*k*). The appellants dug 10 acres at least every year, at an average of $2\frac{1}{2}$ acres per quarter. The greatest area used by them at any one time for coprolite purposes was $3\frac{1}{2}$ acres, and (of the 10 acres) $6\frac{1}{2}$ acres from which the coprolites had been raised were always lying unproductive, though still in the appellants' occupation. The rates were made quarterly, and it was held by the majority of the court (*l*), COCKBURN, C.J., dissenting, that the appellants ought to be rated for 10 acres at their enhanced or coprolite value. In delivering the judgment of the majority, MELLOR, J., said (*m*) :

"The rate must be made on the net *annual value* of the several hereditaments rated thereunto, and therefore it cannot be made upon the net quarterly value of the hereditament liable to the rate ; and it appears to me that the net annual value of the hereditament is the same whether the profit is earned wholly in one quarter of a year, or spread over the year. I cannot distinguish the present case upon this point from an ordinary agricultural farm, in which the net annual value is the same, although the one part of the farm may lie fallow, or be a source of expense at one period, and of profit at another, notwithstanding which the rate must be made upon the farm in respect of its net annual value."

COCKBURN, C.J., who dissented from the judgment of the majority, after remarking that the occupation of the $6\frac{1}{2}$ acres from which the coprolites had been extracted was "simply onerous," continued (*n*) :

"A tenant would not agree to give 115*l.* [per acre] for the right to take fresh land into working if he were to be saddled with the serious cost of restoring $6\frac{1}{2}$ acres of land already worked out by someone else (*o*). All that he would do would be to give that price if placed in the same position as the appellants were in when they first began their operations on entering on the first acre. The consideration for the right of working each acre is the

(*i*) (1875), L. R. 10 Q. B. 230. The case has been already referred to (*supra*, p. 42) in dealing with the question of occupation.

(*k*) The method of working coprolites is described *supra*, p. 42.

(*l*) MELLOR, LUSH, and ARCHIBALD, JJ.

(*m*) L. R. 10 Q. B., at p. 243.

(*n*) L. R. 10 Q. B., at p. 240.

(*o*) The judgment seems to assume that at the making of each rate there must be a fresh tenant, or that the $6\frac{1}{2}$ acres are not held by the same person as the $3\frac{1}{2}$ acres.

amount agreed to be paid, plus the engagement to restore the soil. The consideration for which the appellants agree to restore the soil is that of first extracting the coprolite. A fresh tenant would not undertake the profitless cost of restoring land which he had not had the opportunity of working."

This judgment recognises the fact that the appellants in effect paid rent partly in money and partly by services. Suppose the performance of those services would cost 100*l.* per acre, and suppose the landlord let the land free from the covenant to perform those services, then apparently the appellants would have been willing to give 215*l.* per acre. In that case (assuming the appellants not to be rated for land from which the coprolites had been extracted) the rateable value of the remaining land, calculated in accordance with the judgment of COCKBURN, C.J., would be largely increased, although the substance of the bargain between the parties would not have been altered. The fallacy in the judgment seems to consist in this :—It excludes the exhausted lands from consideration, because the occupation is "simply onerous," while it accepts as the measure of value for the unexhausted lands the rent of 115*l.*, which would have been increased, if the onerous conditions affecting the exhausted lands had been omitted from the lease.

Gravel-pits.—In *Farnham Flint and Gravel Co. v. Farnham Union* (*p*), the appellants bought from a landowner the gravel lying in several plots of his land, each plot being the subject of a fresh agreement entered into as the appellants were ready to dig more gravel. Each agreement related to about an acre of land, the appellants paying a lump sum (of about 175*l.*), and undertaking to level the land (which was estimated to cost about 40*l.* an acre); and they were entitled to remain in possession for a year only. At the date of the rate they were in rateable occupation of 3½ acres, but in 2½ acres out of the 3½ acres the gravel was exhausted and the land was used only for storing gravel already dug, while the gravel in the remaining acre was being dug. The appellants contended that they ought to be rated for only one acre at its value as a gravel-pit, and for the other 2½ acres at their value for storage purposes: the sessions adopted this contention and reduced the rateable value for 400*l.* to 240*l.* The respondents contended (1) that the rateable value should be calculated by ascertaining the actual output of gravel during the year preceding the rate, and calculating the sum which the appellants would have paid thereon according to the market value in the neighbourhood if they had not bought the gravel (and if this method of calculation were right the rate was held to be supported in fact): or alternatively (2) that as the appellants were in occupation of more than two acres

(*p*) Ryde & Konstam's Rat. App. (1894—1904), 217; reported in C. A., [1901].
1 Q. B. 273.

of land, for which they had agreed to pay (in substance) about 220*l.* per acre, they ought to be rated for the full value of all the land as a gravel-pit, although part of it was only available for storage purposes during part of the year; and that on the authority of *R. v. Whaddon* (*q*) the rate could be supported. In the Queen's Bench Division the judges differed, BUCKNILL, J., holding that the sessions were right in reducing the rate, and CHANNELL, J., holding that both contentions of the respondents were correct. BUCKNILL, J., pointed out that the reports of *R. v. Abney Park Cemetery Co.* (*r*) in the Law Journal, and in the Law Times, did not contain two sentences attributed to BLACKBURN, J., in the Law Reports (*s*), viz., "The legislature . . . has taken as a basis the rent which a tenant from year to year would give *during the year preceding* the time of making the rate"; and "No injustice will be done if the company are rated in every year according to the value which a hypothetical tenant would give for the occupation in the preceding year, and, according to this rule, the company's receipts in one year will govern the rateable value of the cemetery in the next." BUCKNILL, J., continued:

"The cemetery company was still in occupation of sufficient ground to be able to sell during the year for which the rate was made, as many grave spaces as would produce an amount equal to the sales of the year preceding it, but in the case before us the whole of the two plots, consisting of 2½ acres, had been at the time of making the rate entirely exhausted of gravel-producing power, and were useless to the occupiers except for storage purposes. [BUCKNILL, J., held that *R. v. Whaddon* (*t*) was distinguishable, and continued:] In my judgment the present case is more like a brickfield or a mine, both of which are, whilst being worked, approaching a period of final exhaustion: so long as they are being worked as brickfields or mines, and there is nothing to show that the profits of the rating year may not be as good as the profits of the past year, then that year may be taken as the basis of the next, if no better can be found; but where the brickfield or the mine has been worked out and exhausted (as in the case of these 2½ acres) and can therefore be no longer worked for the sole purpose for which they are acquired, I cannot agree to the proposition that their rateable value remains unaffected simply because they are still occupied under the terms of the respective contracts made with the owner of the land. In this connection *R. v. Bedworth* (*u*) seems an authority on the point."

CHANNELL, J., held that the case was governed by *R. v. Whaddon* and *R. v. Abney Park Cemetery Co.*, *supra*.

The Court of Appeal (*y*) affirmed the judgment of BUCKNILL, J., holding that the rateable value of a gravel-pit must be taken at

(*q*) (1875), L. R. 10 Q. B. 230, *supra*, p. 402.

(*r*) (1873), 42 L. J. M. C. 124; 29 L. T. 174.

(*s*) See L. R. 8 Q. B., at pp. 519, 520; see also pp. 407, 408, *infra*.

(*t*) (1875), L. R. 10 Q. B. 230, *supra*, p. 402.

(*u*) (1807), 8 East, 387, *supra*, p. 388.

(*y*) [1901] 1 Q. B. 272; Ryde & Konstam's Rat. App. (1894—1904), 217.

the rent which would be given for it at the date of the making of the rate, having regard to the amount of gravel then remaining unexhausted. A. L. SMITH, L.J., said (*z*): "If the dictum attributed to Lord BLACKBURN in *R. v. Abney Park Cemetery Co.* (*a*)—that in estimating rateable values the general rule was to consider what a tenant from year to year would give during the year preceding the time of making the rate—was really uttered, I cannot agree with it." And COLLINS, L.J., said (*b*):

"In my opinion there are two cardinal distinctions between *R. v. Whaddon* (*c*) and the present case. There an initial difficulty existed which the court had to get over, that the person rated had a shifting occupation amounting at all times of the year to ten acres, though they were not always the same ten acres. That was got over by treating the occupation as an occupation of ten acres, though it might not be possible to define the exact ten acres. There was exhaustion at one end of the land occupied and accretion at the other, so that the tenant had always had in view the right to occupy ten acres at a time. When considering what amount an hypothetical tenant would give, it was kept in view that he would have the right to get out as much as he could, though he could not work more than ten acres at a time. Here it would not be justifiable to take into consideration any expectation of acquiring any further holding. . . . I do not think that BLACKBURN, J., can be taken to have decided that as a general rule the preceding year is to be looked at. The passages quoted are not to be found in the other reports of the case (*d*), and are inconsistent with a long series of cases, and were not necessary for the decision of the case in which they occur."

Remarks on the Farnham and Whaddon Cases.—The decision in *Farnham Flint and Gravel Co. v. Farnham Union* (*e*) was a decision of the Court of Appeal, and therefore if it is inconsistent with *R. v. Whaddon* (*f*), the last-mentioned case must be taken to be overruled. COLLINS, L.J., treats the cases as distinguishable on the ground that in *R. v. Whaddon* the person rated had the right, as each acre of land was exhausted, to take possession of fresh land containing coprolites. In *R. v. Whaddon* it was held that the occupier was to be rated for ten acres at their enhanced value as land containing coprolites, although at the date of the rate (or at any time) he was in possession of only about $3\frac{1}{2}$ acres of land containing coprolites, the other $6\frac{1}{2}$ acres being exhausted and (for the time being) valueless. It is submitted that paragraph 9 of the special case in *R. v. Whaddon* (*g*) shows that the overseers had rated the appellant for *the ten acres then in his possession*,

(*z*) [1901] 1 Q. B. at p. 281.

(*a*) L. R. 8 Q. B. 515, at p. 519.

(*b*) [1901] 1 Q. B. at pp. 282, 284; Ryde & Konstam's Rat. App. (1894—1904), at pp. 228, 229. (c) (1875), L. R. 10 Q. B. 230.

(*d*) 42 L. J. M. C. 124; 29 L. T. 174; 21 W. R. 847; 37 J. P. 822.

(*e*) [1901] 1 Q. B. 272.

(*f*) (1875), L. R. 10 Q. B. 230; *vide supra*, p. 402.

(*g*) L. R. 10 Q. B. 230; see the last line on p. 234.

including $6\frac{1}{2}$ acres of exhausted land ; and all ten acres were rated at the enhanced value. Now if the Queen's Bench decided that the ten acres then occupied were to be rated on this basis, it appears to the writer that the decision is really in conflict with, and is overruled by, the decision of the Court of Appeal in the *Farnham Case*. If, on the other hand, the true view of the decision in *R v. Whaddon (h)* is that the ten acres for which the appellant was rated consisted of $3\frac{1}{2}$ acres of land containing coprolites, already in his possession, together with $6\frac{1}{2}$ acres of fresh land, the possession of which he had the right to demand and was expected to demand, under his agreement with the landowner, then the decision appears to be inconsistent with *R. v. Fayle (i)*, in which it was held that the grantee of the right to dig for clay in certain specified lands was not rateable for such lands until he acted under the grant. On either view the authority of *R. v. Whaddon* seems to be much shaken.

Different classes of cemeteries.—We have already seen (*j*) that land acquired under the Burial Acts, 1852 to 1855, for the purpose of a burial ground may never be rated at a higher value than the value of the land at the date of such acquisition. But this statutory limitation of value does not apply to cemeteries made by cemetery companies, which are rateable on the same principles as ordinary property, *i.e.*, on the rent for which they may reasonably be expected to let. It is now proposed to deal with this latter class.

Who is to be rated for a cemetery.—Where a cemetery company receive money for the use of single graves, or for the exclusive right (in perpetuity) to bury in vaults, two things are obvious : (1) that the company are parting with many of their rights over the land used ; (2) that their property is gradually being exhausted. The first point affects the question, who is to be rated ; the second affects the question of amount.

In *R. v. St. Mary Abbot's (k)*, the cemetery company admitted their liability to be rated for so much of the cemetery as remained in their possession, but denied it in respect of those portions which had been permanently sold for vaults. The purchasers not only had the exclusive right of burial in the vaults (*l*), but also had the keys of the vaults delivered to them, and kept the vaults in repair. But it was held that as the company had the control of the external entrance of the cemetery, of which they kept the keys, and had

(h) (1875), L. R. 10 Q. B. 230.

(i) (1856), 4 W. R. 460 ; *supra*, p. 41.

(l) At each interment certain fees were payable.

(j) *Vide supra*, p. 123.

(k) (1840), 12 A. & E. 824.

the general control and superintendence over the whole, which they were bound to keep in repair, they were in occupation of the whole. And WILLIAMS, J., said: "It is a fallacy to treat the conveyance as a sale of land; by the grant they only part with the exclusive right of sepulture" (*m*); and this right was called by COLERIDGE, J., "a peculiar easement." An attempt was made to distinguish this case in *R. v. Abney Park Cemetery Co.* (*n*), on the ground that in the latter case the company conveyed the land (for vaults, etc.) in fee, and the grantee had to keep the tomb in repair. But it was held that the company remained in occupation, and that it made no difference that the legal estate was outstanding and vested in the purchaser, since under the grant the graves were to be made subject to the regulations of the company (*o*).

These cases illustrate the general rule that where the occupier of a hereditament grants to another person defined subordinate rights, relating to the use of a part of the hereditament, while he retains the general control of the whole, he must be rated as the occupier of the whole (*p*).

Method of valuing a cemetery.—The cemetery company being the rateable occupiers, the next question to be determined is the amount at which they are to be rated. In *R. v. St. Mary Abbot's* (*q*), it was held that all the profits must be brought into account, including the receipts from the sale of the right of burial in perpetuity. In *R. v. Abney Park Cemetery Co.* (*r*), where the company sold not the right of burial but the land itself, it was argued that the receipts from such sales ought not to be included, or at least ought to be spread over several years, as had been done in *R. v. Mirfield* (*s*). But BLACKBURN, J., said (*t*):

"That will be an alteration of the principle laid down in the Parochial Assessments Act, and is at variance with *R. v. Westbrook* (*u*). A similar argument was unsuccessfully urged in that case. *R. v. Mirfield* (*s*) is quite an exceptional case. No injustice will be done if the company are rated in every year according to the value which a hypothetical tenant would give

(*m*) *Cf. Mayor, etc. of Southport v. Ormskirk*, Ryde's Rat. App. (1891—1893) 355, 438, *supra*, pp. 40, 265—267.

(*n*) (1873), L. R. 8 Q. B. 515.

(*o*) It must also be noticed that the gates of the cemetery were locked at night and no admission was allowed by the company, even to a purchaser of a vault.

(*p*) *Vide supra*, p. 32; and see especially *London and North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 444, *supra*, p. 35; *Rockdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, *supra*, p. 34.

(*q*) (1840), 12 A. & E. 824.

(*r*) (1873), L. R. 8 Q. B. 515, *supra*.

(*s*) (1808), 10 East, 219, *infra*, p. 412. That case related to the rating of saleable underwoods, which are now rated according to the Rating Act, 1874, *infra*, p. 413.

(*t*) L. R. 8 Q. B., at p. 520.

(*u*) (1847), 10 Q. B. 178, *supra*, p. 397.

for the occupation in the preceding year, and according to this rule, the company's receipts in one year will govern the rateable value of the cemetery in the next" (*x*).

The sentence last cited must not be taken as laying down (as a definite rule of law) that the receipts of one year *must* govern the rating in the next, or (if that is what it means) it must be regarded as overruled by *Farnham Flint and Gravel Co. v. Farnham Union* (*y*). It is submitted, however, that it is permissible to take the receipts of one year as *prima facie* evidence of what rent a tenant would give for the next year, subject of course to any necessary qualifications if it can be shown that a change of circumstances is about to take place. In fact this is the method generally adopted in rating gasworks, waterworks, and railways.

The principle on which a brickfield is rated (*z*) applies precisely to a cemetery. A brickfield, or a cemetery, as long as it remains what it is, can be used only for a purpose which will ultimately exhaust the hereditament itself. A worked-out brickfield, or a cemetery which is full, may, perhaps, be turned to other purposes, and for those purposes may command a rent. But the value which the land commanded for its original user will be gone. And as no sinking fund to reproduce the exhausted value of the brick-earth can be allowed in the one case (*u*), so it appears that in the other case no sinking fund to replace the cemetery when full can be allowed.

Deduction for expenses of company.—In *R. v. St Giles', Camberwell* (*b*), although only one point was decided by the Queen's Bench, it may be useful to note that, in arriving at the rateable value of the cemetery at Nunhead, the quarter sessions deducted from the gross revenue earned by that cemetery all the local expenses incurred there, plus 10 per cent. on the gross revenue for tenants' profits. The questions raised in the Queen's Bench were whether further deductions should be made in respect of the general expenditure of the company (who had another cemetery at Highgate) in respect of directors and auditors, secretary's salary, rent of an office at Blackfriars, office expenses and the like. The only point decided by the Queen's Bench was that no deduction should be allowed for salaries of directors, auditors, or secretary, on the ground that "the expenses were quite collateral to the occupation of the land, and in fact had

(*x*) Strictly, the next but one; for in the metropolis, to which the case related, the valuation list made in 1870 on the receipts of 1869, came into force in April, 1871. See the Valuation (Metropolis) Act, 1869, ss. 6, 42 (1), 43, set out in Appendix II.

(*y*) [1901] 1 Q. B. 272, at pp. 281, 284; *supra*, p. 403.

(*z*) *Vide supra*, pp. 399, 400. As to the valuation of a cemetery when it is nearly full, see *Farnham Flint and Gravel Co. v. Farnham Union*, *supra*, pp. 403—406.

(*u*) *Vide supra*, pp. 392, 393.

(*b*) (1850), 14 Q. B. 571.

nothing to do with it. They were modes of expending the revenue when derived, but formed no part of the means necessary to acquire it."

This decision is sometimes cited as authority for the general proposition that, in rating a company, no deduction must be made from the gross receipts in respect of directors' fees. But the decision on the point of law is based on the finding, or assumption, of fact that the expenses in question "formed no part of the means necessary to acquire" the company's revenue. Whether this were true or not in the particular case before the court is immaterial; it certainly is not true of every company. And in the next year after the decision of *R. v. St. Giles', Camberwell*, the Queen's Bench, in *R. v. Southampton Dock Co. (c)*, taking a different view of the facts, allowed a deduction for directors' fees, as a reasonable allowance for managing the company's business.

Deductions for office expenses and rent.—Another point, argued but not decided in *R. v. St. Giles', Camberwell (d)*, may be referred to, viz., the deduction for rent of the company's office (*e*), and the office expenses incurred there. Of course, it is true that in ascertaining the rateable value of a hereditament no deduction must be made for the rent of the whole or any part of that hereditament: for the rateable value is the yearly rent, and it cannot be right to deduct the very thing which is to be ascertained (*f*). But, assuming the office to be necessary for the business, and for earning the income of the cemetery company, the rateable value ascertained from the receipts and expenses of the company, without deduction for the rent of the office, represents the rateable value of the cemetery *and the office together*: no tenant would give, as rent for the cemetery alone, the full rateable value thus ascertained, because he would know that in order to earn the income which that rateable value represents, he must incur an additional expense (say, 100*l.* a year for rent) for which no allowance has yet been made. The proper course is to deduct from the full rateable value of the whole undertaking, so much as represents the rateable value of the office (*g*), which may be more or less than the actual rent paid. The illustrations given in argument in *R. v. St. Giles', Camberwell (h)*, are misleading. It was said that a colliery or a brickfield is not rated at less because the owner keeps an office; but a colliery or a brickfield is generally

(*c*) (1851), 14 Q. B. 587.

(*d*) (1850), 14 Q. B. 571.

(*e*) The office was in another parish and therefore rated separately from the cemetery.

(*f*) See also p. 175, *supra*.

(*g*) In other words, the office may be treated in the calculation in the same way as a railway station or the works of a gas company: *vide supra*, pp. 193, 281.

(*h*) (1850), 14 Q. B. 571, at p. 584.

rated with reference to the rent or royalty which is paid, or which might be paid, for that or similar property ; and in considering what rent or royalty he can afford to pay, a tenant will bear in mind that he must have an office, and provide for office expenses ; and having (presumably) reduced the rent or royalty on this account, he cannot claim in respect of the same expenses a second deduction from the royalty after it has been fixed. But these considerations (which are relevant when rent is the starting point of the calculations) do not apply where (as in *R. v. St. Giles', Camberwell*) the calculations are made the other way, and we endeavour to deduce from the profits made the rent which a tenant can afford and would be willing to pay.

CHAPTER XXII.

WOODLANDS, SPORTING AND COMMON RIGHTS.

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Woodlands, saleable underwoods.—The statute 43 Eliz. c. 2, specially mentions “saleable underwoods,” and this special mention (*a*) led to the exemption of all other kinds of woods from rateability (*b*). Although the Rating Act, 1874 (*c*), makes all kinds of woods now rateable, it may be useful to note shortly the cases decided before the date of that Act with reference to the meaning of the words “saleable underwoods” in the statute 43 Eliz. c. 2.

In *R. v. Minchinhampton* (*d*), it was held that beech, being timber according to the custom of the country, was not rateable, and a similar decision was given in *Aubrey v. Fisher* (*e*). In *R. v. Ferrybridge* (*f*), it was held that firs and larches planted with oaks, to protect the latter, and cut from time to time as the oaks grew larger, were not “saleable underwoods,” the object of planting them being to protect the oaks, and not to derive a profit from them by sale; and it was doubted whether they were underwoods at all. In *R. v. Narberth North* (*g*), the appellant was rated

(*a*) In the same way, the special mention of “coal mines” led to the exemption of all other mines: *vide supra*, pp. 379, 380.

(*b*) *R. v. Minchinhampton* (1762), 3 Burr. 1309; *Aubrey v. Fisher* (1809), 10 East, 446; *Eyton v. Mold* (1880), 6 Q. B. D. 13.

(*c*) 37 & 38 Vict. c. 54, s. 3: *vide infra*, p. 413. The Act is set out in Appendix II.

(*d*) (1762), 3 Burr. 1309.

(*e*) (1809), 10 East, 446.

(*f*) (1823), 1 B. & C. 375.

(*g*) (1839), 9 A. & E. 815.

for a wood consisting chiefly of oaks growing from old stools, which had not been cut for fifty years until the last three years before the rate ; in each of those three years the appellant had annually cut the worst shoots, selling them for colliery purposes and firewood. The quarter sessions held that the appellant was not rateable, considering that the trees were not saleable underwood, and the Queen's Bench, regarding the question as one of fact, refused to disturb the finding, although apparently doubting the correctness of it. In *Lord Fitzhardinge v. Pritchett* (*h*), it was held that the question whether woods are "saleable underwoods" depends upon the mode and object of their cultivation ; and that if a succession of profitable crops from the same roots or stools be produced, the woods so treated are "saleable underwoods," and that it is immaterial at what intervals the successive crops are cut, and of what species of trees the woods consist.

In *R. v. Mirfield* (*i*) the question was raised whether saleable underwoods were to be rated in every year or only in the year in which they were cut down and sold. The woods in question (which appear to have been admittedly underwoods) were usually sold and cut down once in twenty-one years, and at the date of the rate had been growing for ten years since the last cutting. In effect the question for the court to decide was whether the words "saleable underwoods" in the statute 43 Eliz. c. 2, mean underwoods when they are in a fit state for sale or underwoods intended for sale. Lord ELLENBOROUGH, C.J., said (*j*) :

"We are of opinion that it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made ; but that the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. Instances continually occur in which the occupier is rated, though he has derived no profit during the period for which the rate is made. A new tenant upon an arable farm reaps none of the produce till the autumn after his tenancy commenced, and yet he must pay up to that autumn according to the rent or value of the estate. He must pay beforehand for the future probable produce. His farm is constantly in a progressive state towards producing profit, and he pays for that progress. So underwoods are annually improving in value, and the rates the occupier pays are for that improvement."

It must be noticed that although *R. v. Mirfield* (*k*) was decided long before the passing of the Rating Act, 1874 (*l*), or even of the Parochial Assessments Act, 1836 (*m*), it appears to be still good law. In *R. v. Abney Park Cemetery Co.* (*n*), decided in the year before the passing of the Rating Act, 1874, BLACKBURN, J., spoke

(*h*) (1867), L. R. 2 Q. B. 135.

(*i*) (1808), 10 East, 219.

(*j*) 10 East, at p. 225.

(*k*) (1808), 10 East, 219.

(*l*) 37 & 38 Vict. c. 54, *infra*, p. 413.

(*m*) 6 & 7 Will. 4, c. 96 : see Appendix II.

(*n*) (1873), L. R. 8 Q. B. 515, *supra*, p. 407.

of *R. v. Mirfield* (o) as being "quite an exceptional case," but did not suggest that the case was no longer law since the passing of the Parochial Assessments Act, 1836. Of course, since the passing of the Rating Act, 1874, s. 4 of that Act, and not s. 1 of the Parochial Assessments Act, 1836, governs the rating of saleable underwoods.

Herbage and pannage of a forest.—In connection with the rating of woodlands, it may be mentioned that there are cases to be found in the old books relating to the rating of the "herbage and pannage" (p) of a forest in the hands of a grantee under the Crown (q). In *Jones v. Maunsell* (r), it was held to be very doubtful whether such property was rateable; and in *Lord Bute v. Grindall* (s) the question was avoided by a finding that the herbage and pannage yielded no profit to the grantee, in which case there would be nothing to rate. At the date of these decisions an "inhabitant" was in strictness rateable (though sometimes not rated), in respect of every kind of property, whether he was an occupier of land or not (t). In modern times (u) the question would be put thus: is the person rated an occupier of land? And, if so, does the right to herbage and pannage increase the rent which he would be willing to pay for that occupation? If so, it must be taken into account; but if he is not an occupier of land, he cannot be rated at all.

The rating of woodlands since 1874.—The Rating Act, 1874 (x), by s. 14 repeals "so much of 43 Eliz. c. 2 as relates to the taxation of an occupier of saleable underwoods"; but by s. 3 extends the same Act (and the Acts amending it) to "land used for a plantation or a wood, or for the growth of saleable underwood, and not subject to any right of common" (y). And s. 4 provides that—

"The gross and rateable value of any land used for a plantation or a wood, or for the growth of saleable underwood, shall be estimated as follows:

"(a) If the land is used only for a plantation or a wood, the value shall

(o) (1808), 10 East, 219.

(p) Pannage is the food that swine feed on in the woods, as mast of beech, acorns, etc., or the money paid for such food: see Wharton's Law Lexicon, and 1 Bulst. 7.

(q) The exemption of the Crown did not protect such a grantee: *vide supra*, p. 89.

(r) (1779), 1 Dong. 302.

(s) (1786), 1 T. R. 338; affirmed in the Exchequer Chamber (1793), 2 H. Bl. 265.

(t) *Vide supra*, pp. 2, 3.

(u) *I.e.*, since the passing of 3 & 4 Vict. c. 89: *vide supra*, p. 4.

(x) 37 & 38 Vict. c. 54; set out in Appendix II.

(y) The last words above quoted were perhaps inserted in order to prevent the owner of woods, etc., subject to a right of common, from being rated for the full value of those woods while the owners of the rights of common, which exhausted the value of the woods, escaped from rating.

be estimated as if the land instead of being a plantation or a wood were let and occupied in its natural and unimproved state :

“(b) If the land is used for the growth of saleable underwood, the value shall be estimated as if the land were let for that purpose :

“(c) If the land is used both for a plantation or a wood, and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine.”

Inasmuch as the value of land used for the growth of saleable underwoods is to be estimated under the section above quoted, as if the land were let for that purpose, it is presumed that the land may be supposed to be let on lease, and that the principle laid down in *R. v. Mirfield* (z) is still to apply.

It is very difficult, in rating land used for woods and plantations, to understand what is meant by “its natural and unimproved state,” the phrase used in the section above quoted. It may be that the draftsman was thinking only of plantations, and that the object merely was to prevent the owner from being rated in respect of the additional value created by the investment of capital in planting, which investment would produce no return for many years. In *Earl of Westmoreland v. Southwick and Oundle* (a), certain woodlands were assessed by quarter sessions at their value if occupied in their natural and unimproved state ; but it was found as a fact that they might be worth much more if certain expenditure were incurred for grubbing up woods, draining, and road making. It was held that the sessions were right, and that woodlands were not to be rated on any assumption of their improved value upon alteration into land of a different description. This case is an illustration of the general principle that, for rating purposes, land must be valued as it exists at present, and not at the value which it may have hereafter, when used in a different way (b).

In *Eyton v. Mold* (c), in rating land used as plantations or woods and having an increased value of two shillings per acre in respect of the right of sporting (d), it was held that the right of sporting was properly taken into account in estimating the value of the land in its natural and unimproved state (e).

(z) (1808), 10 East, 219, *supra*, p. 412.

(a) (1877), 36 L. T. 108 ; *S. C. sub nom. R. v. Oundle*, 41 J. P. 231.

(b) *Vide supra*, pp. 158—160.

(c) (1880), 6 Q. B. D. 13.

(d) As so the rating of rights of sporting, *vide infra*, pp. 415—417.

(e) This decision overrules an earlier decision of the Herts quarter sessions to the contrary : see *Baker v. Beyford* (1876), 33 L. T. 755.

Partial exemption of woodlands from sanitary rates.—

The effect of s. 12 of the Rating Act, 1874 (*f*), is that "land used for a plantation or wood, or for the growth of saleable underwoods and not subject to any right of common" (see s. 3) is entitled to the three-fourths exemption conferred on "woodlands," for the general district rate made by an urban district council, and the rate for special expenses made by a rural district council, under ss. 211 and 230 of the Public Health Act, 1875. It is remarkable that for the rates to which the Agricultural Rates Act, 1896 (*g*) applies, woodlands of all kinds pay the full rate in the pound, and are not entitled to the one-half exemption conferred by that Act on "agricultural land."

Rights of sporting: the law before 1874.—The rating of rights of shooting, fishing, and the like, is now regulated by the Rating Act, 1874 (*h*), but before considering the effect of that Act it is desirable briefly to notice the decisions which rendered it necessary.

Rights of fishing and shooting are frequently not in the hands of the occupier of the land over which they are exercised; the owner of the land may let the sporting rights to one person, and the general occupation of the land to another; or he may retain the sporting rights and let the occupation, or *vice versa*. Under 43 Eliz. c. 2, the occupier of land is rateable, and no mention is made of sporting rights. The earliest case on the subject appears to be *R. v. Ellis* (*i*), in which it was held that the owner of a fishery under a grant which conveyed the soil to the grantee was rateable for it (*k*), but that a fishery unconnected with the soil was not rateable. In *Hilton v. Bowes* (*l*), it was held that a right of shooting separated from land, and becoming an incorporeal hereditament in gross was not rateable.

Where rights of shooting were retained by the landowner, or let to some person other than the occupier, it appears to have been the practice in 1854 not to rate anybody for the shooting (*m*). But in *R. v. Williams*, decided in that year, it was held that a tenant who had taken a farm without the right of shooting over it, and had afterwards taken the shooting under a separate agreement, was rateable for the full value of the farm as enhanced by the right of shooting. Here the right of shooting and the occupation were vested in one and the same person though under different titles.

(*f*) Set out in Appendix II. (*h*) 37 & 38 Vict. c. 54: set out in Appendix II.

(*g*) *Vide supra*, p. 113. (*i*) (1813), 1 M. & S. 652.

(*k*) The case found that the person rated was not an inhabitant, and therefore it was essential to show that the person rated was an occupier of land. As to the liability of an inhabitant as distinguished from an occupier, *vide supra*, pp. 2, 3.

(*l*) (1886), L. R. 1 Q. B. 359.

(*m*) See the argument in *R. v. Williams* (1854), 23 L. T. (O.S.) 76; 2 W. R. 410.

In *R. v. Thurlstone* (*n*), it was held that a tenant of land, the right of shooting over which was reserved to the landlord, was rateable for the land as diminished in value by the reservation of the right of shooting (*o*). The effect of this decision was, that if the right of shooting were not in the hands of the occupier of the land, so much of the value of the land as was represented by that right escaped from being rated: the person possessing the right could not be rated for it, because it was an incorporeal right in gross: the occupier could not be rated for it, because it did not form part of the value of his occupation. In *R. v. Battle Union* (*p*) it was held that an owner of land who kept it in his own occupation, but let the right of shooting to another, was himself rateable for the full value of the land as enhanced by the value of the right of shooting, because he received, as an incident of his occupation, the rent for the shooting. This case, combined with *R. v. Thurlstone* (cited above) created this anomaly: If a tenant took land, without any reservation of the right of shooting, at a rent of (say) 100*l.* and let the shooting to his landlord at 10*l.*, the tenant was rateable for the full value of 100*l.* If, however, the tenant took the land at the reduced rent of 90*l.*, the landlord reserving to himself the right of shooting, the tenant was rateable at the reduced value of 90*l.*, although the practical effect would be precisely the same as in the former case, when he would be rateable at 100*l.*

Rights of sporting: the Rating Act, 1874. — The rating of sporting rights, when severed from the occupation of land, is now regulated by s. 6 of the Rating Act, 1874 (*q*). That section leaves the law as laid down in *R. v. Williams* (*r*) unaltered, and does not apply where the sporting rights are in the hands of the occupier of the land: he is rateable for the full value of the occupation, of which the value of the sporting rights forms part. Where any right of sporting (*s*) is “severed from the occupation of the land,” and is *not* let (as in the case where the landlord reserves it for himself), the occupier is to be rated for the full value of the land (including the right of sporting) but may deduct from his rent the rates paid in respect of the increase (if any) of his assessment on account of the value of the right of sporting being rated. Where a right of sporting is severed from the occupation of land and is let, then either the owner of the right, or the lessee, accord-

(*n*) (1859), 1 E. & E. 502; 28 L. J. M. C. 106.

(*o*) This decision was very much questioned in *R. v. Battle*, cited below, and it is submitted that it is contrary to *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276; *supra*, p. 248.

(*p*) (1866), L. R. 2 Q. B. 8; reported *sub nom.* *Meyrick v. Battle Union*, 31 J. P. 19.

(*q*) See the Act in Appendix II.

(*r*) (1854), 23 L. T. (o.s.) 76: *vide supra*, p. 415.

(*s*) “Right of sporting” is defined by s. 6 as meaning “any right of fowling, or of shooting, or of taking or killing game or rabbits, or of fishing.”

ing as the persons making the rate determine, may be rated as the occupier thereof. It will be noticed that s. 6 of the Rating Act, 1874, gets rid of the difficulty (referred to above) that a right of sporting, when severed from the occupation of land, is an incorporeal right in gross.

In *Kenrick v. Overseers of Guilspield* (t), the meaning of the words "severed from the occupation of land" used in s. 6 of the Rating Act, 1874, was considered; the owner of land, which he kept in his own occupation, let the shooting to the appellant, who was rated for it. It was contended that inasmuch as *R. v. Battle Union* (u) (before the passing of the Rating Act, 1874) decided that the owner and occupier of the land, when in receipt of the rent for the right of sporting, was rateable for the full value of the land, including the right of sporting, the words "severed from the occupation of the land" used in s. 6 of the Rating Act, 1874, must be read in the light of that decision, and that the section did not apply where the owner and occupier of the land would (before the Act) have been rateable for the right of sporting. But the court held that the right of sporting was "severed from the occupation of the land," and that either the owner of the right or the lessee could be rated at the option of the overseers.

In *Eyton v. Mold* (x), it was held that in rating woodlands under s. 4 of the Rating Act, 1874 (y), the additional value attributable to the sporting rights in those woodlands must be taken into account.

In *Rogers v. St. Germans* (z), the point was raised, but not decided, whether, in order to be separately rateable under s. 6 of the Rating Act, 1874, it was necessary that the right of sporting need be exclusive. It is submitted that there is nothing in the Act requiring it to be exclusive. If the occupier of land lets to another person a right of sporting over it, that right is none the less severed from the occupation of the land because the occupier reserves to himself a concurrent right. The reservation of a concurrent right may affect the value of the right severed, but does not affect the nature of the severance. The term "right of sporting" includes (*inter alia*) the right of taking or killing rabbits; and under the Ground Game Act, 1880 (a), the occupier has as incident to, and inseparable from his occupation, the right to take and kill hares and rabbits, concurrently with any other person who may be entitled to kill and take hares and rabbits on the same land. If, therefore, a right of sporting can only be separately

(t) (1879), 5 C. P. D. 41.

(u) (1866), L. R. 2 Q. B. 8; reported *sub nom.* *Meyrick v. Battle Union*, 31 J. P. 19.

(x) (1880), 6 Q. B. D. 13.

(y) *Vide supra*, p. 413. The Act is set out in Appendix II.

(z) (1876), 40 J. P. 807; 35 L. T. 332.

(a) 43 & 44 Vict. c. 47.

rated under the Rating Act, 1874, when it is exclusive, a right of shooting rabbits can never be separately rated.

Commons and common rights.—There is no doubt that the owner of a mere incorporeal right of common is not rateable for it as such (*b*): land to which a right of common is attached may on that account be rated at a higher value, but the right of common is not rateable *per se* (*c*). But there the occupier of the land to which the right is attached is rated for the occupation of the land, and the rateable value of that occupation is measured, under the Parochial Assessments Act, 1836 (*d*), by the rent a tenant may reasonably be expected to pay. If the existence of the right of common would induce any tenant to give a higher rent for the land to which the right is attached, then the rateable value of the land is increased to that extent. No difficulty is met with in rating land to which a right of common is attached; the difficulty arises when it is sought to impose a rate on land over which rights of common are exercised. For the exercise of a so-called right of common may involve such a user of land as to be nearly, if not quite, equivalent to an occupation of the land. In such a case, three questions may arise: (1) Whether there is any occupier at all? (2) Who is the occupier? and (3) Is the occupier to be assessed at the value of the land as diminished by the existence of the common right, or at the full value, including the value of that right?

Occupation distinguished from a right of common.—In *R. v. Churchill* (*e*) the burgesses of Nottingham, and the occupiers of ancient messuages there, had, for a certain portion of the year, the right to turn a limited number of cattle into certain fields, belonging to different persons, who were during that period excluded. It was held that the right belonging to the burgesses and occupiers of ancient messuages was a mere right of common for which they were not rateable. Except that in this case the right of turning cattle in was limited to a part of the year, and that nothing was paid for the exercise of that right, there appears to be little to distinguish it from *R. v. Watson* (*f*), in which it was held that the individual burgesses were rateable as occupiers.

In *R. v. Chamberlains, etc., of Alnwick* (*g*), by immemorial user and various grants by the lords of the soil to the corporation of

(*b*) See *Kempe v. Spence* (1779), 2 Wm. Bl. 1244; *R. v. Churchill* (1825), 4 B. & C. 750; *R. v. Alnwick* (1839), 9 A. & E. 444, at p. 457.

(*c*) See *Kempe v. Spence*; *R. v. Churchill*, *supra*; *Mayor, etc., of Worcester v. Droitwich* (1876), 2 Ex. D. 49, at p. 61. Note that in *Kempe v. Spence* the land to which the right of common was attached was in one parish, and the land over which the right was exercised was in another.

(*d*) 6 & 7 Will. 4. c. 96, s. 1: set out in Appendix II.

(*e*) (1825), 4 B. & C. 750.

(*f*) (1804), 5 East, 480; *infra*, p. 419.

(*g*) (1839), 9 A. & E. 444.

Alnwick, the freemen of Alnwick were entitled to have common of pasture in Alnwick moor, paying a fixed rent of 2s. a year, and a right to dig and cut peat, furze, turf and brushwood, with liberty to get limestone, slate and freestone, to dig clay and burn bricks; to dig and take away sand, gravel, clay and marle; and to erect limekilns and herds' houses. The lord had the right to, and in fact did, grant licences to make bricks, get clay, make permanent wash-pools (for washing sheep), and win ironstone, coal, and limestone. The freemen paid nothing to the corporation for the right to put cattle on the moor, and the corporation, in their corporate capacity, made no profit from the moor. The corporation employed persons to hoe and burn whins and furzes, and to gather stones, drain, and sow grass seeds. The Queen's Bench held that the corporation were not rateable, because the rights of the freemen (though large and unusual) were those of commoners only; and that, as they were not more than an incorporeal hereditament, the rate on them could not be supported.

It will be seen that in this case the court appeared to have treated the question of rateability as a question of title, whether the persons rated had more than an incorporeal hereditament. But the question of occupation depends rather upon the nature of the use made of the land by the person rated (*h*), and a person acting under a mere licence to enter upon land, if he has in fact the exclusive occupation, is rateable (*i*).

Who is the occupier of land subject to rights of common.—The earliest case on the subject is *R. v. Aberavon* (*k*), in which the corporation of Aberavon were seised in fee of uninclosed lands, which were stocked with the cattle of resident burgesses; as a matter of charity the burgesses permitted some poor persons who were not burgesses to feed their cattle there. The sessions quashed a rate on the ground that it omitted these lands altogether and the King's Bench declined to disturb this order, but at the same time held that it was doubtful whether the corporation or the individuals were the occupiers. In the arguments it appears to have been admitted that some person was in occupation, and ought to have been rated.

In *R. v. Watson* (*l*) the corporation of Huntingdon were the owners of common pasture lands, stocked by such resident burgesses of the borough as thought proper to stock, according to a stint annually fixed by a jury of burgesses. There were about eighty resident burgesses, of whom some did, and some did not,

(*h*) See *Lord Bute v. Grindall* (1786), 1 T. R. 338; (1793), 2 H. Bl. 265; *Holywell Union v. Halkyn District Mines Drainage Co.*, [1895] A. C. 117; *et vide supra*, pp. 39, 43, 51.

(*i*) *Kittow v. Liskeard Union* (1874), L. R. 10 Q. B. 7; *supra*, p. 41.

(*k*) (1804), 5 East, 452.

(*l*) (1804), 5 East, 480.

stock. Those who did not stock received an annual payment of 19s. 4d. from those who did. It was held that those who stocked the pastures were tenants in common, and were rateable (*m*). It must be noticed that in this case no other persons than the resident burgesses exercised, *at any time of year*, any rights over the land: the facts, therefore, were different from the case next decided.

In *R. v. Tewkesbury* (*n*), the land in question belonged to several different owners (*o*), but under a local Act, the aftermath was vested in trustees, who were empowered to let it, either annually or for a term of years, to any persons whomsoever (whether burgesses or not) or to let it "in pastures for horses, cattle and sheep." The rents were to be divided among the burgesses and the occupiers of certain houses. At the time of the rate, the trustees let the aftermath "in pastures" to persons who turned in their cattle at so much a head. It was held that the trustees were rateable as occupiers, the persons who turned in cattle having no right to a definite portion of the aftermath, because the trustees were not bound to limit the number of cattle. It is to be observed that in this case the rights of the trustees were limited to the aftermath, and did not cover the whole of the year (*p*): and that no notice was taken of the fact that the trustees were merely bare trustees (*q*) for the burgesses, and for certain householders who might or might not be burgesses.

In *R. v. Sudbury* (*r*) the corporation were seised in fee of pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing: and at a court held annually made regulations, fixing the number of cattle each burgess might turn on, the day for turning on, and the money to be paid, which money (after deducting the expenses of management) was paid to the borough treasurer and distributed among the poorer burgesses who did not turn on. The court held that the corporation were rateable, and two out of the three judges doubted the correctness of the decision in *R. v. Watson* (*s*). In *R. v. Sudbury* the court relied mainly on the fact that the corporation by the ranger (who was their servant) kept the keys of the gates, etc. (*t*). It is also to be noticed that, as in *R. v. Tewkesbury* (*u*), the fact that the corpora-

(*n*) This decision was very much questioned in *R. v. Sudbury* (1823), 1 B. & C. 389, *infra*.

(*o*) (1810), 13 East, 155.

(*p*) No further mention is made of these owners. They apparently mowed the first crop of grass and probably were rated as occupiers: *cf. Trenfield v. Lowe* (1869), L. R. 4 C. P. 454; *infra*, p. 421.

(*q*) *cf. R. v. Churchill* (1825), 4 B. & C. 750; *supra*, p. 418.

(*r*) *cf. Mayor of Lincoln v. Holmes Common* (1867), L. R. 2 Q. B. 482; *infra*, p. 423.

(*s*) (1825), 1 B. & C. 389.

(*t*) (1804), 5 East, 480, *supra*.

(*u*) *cf. Rochdale Canal Co. v. Brewster*, [1894] 2 Q. B. 852, and the cases therein cited: *vide supra*, pp. 32—35.

(*v*) (1810), 13 East, 155; *supra*.

tion occupied the position of bare trustees for the poorer burgesses did not prevent them from being held rateable.

In *R. v. Mayor, etc., of York* (*x*) certain pasture lands were vested in the corporation, whose officers made regulations for the use of the pastures, directed all the repairs of gates and fences, and appointed a herdsman to look after the cattle. The wages of the herdsman and all other expenses were defrayed by an annual sum paid by the freemen for each head of cattle depastured, and varying according to the annual expenses; and the balance (if any) was not paid into the funds of the corporation, but was carried forward to the account of the pastures for the next year. The corporation having been rated, it was contended (1) that they were not in occupation, and (2) that they had no beneficial occupation (*y*), because no profits were received at all. But the court held, on the authority of *R. v. Tewkesbury* (*z*) and *R. v. Sudbury* (*a*) that the corporation were the occupiers, and (in order to avoid overturning those cases) that the corporation were in beneficial occupation.

It will be noticed that *R. v. Mayor, etc., of York* (*b*) was decided in 1837, and therefore after the passing of the Municipal Corporations Act, 1835 (*c*), and before the decision of *Jones v. Mersey Docks* (*d*). The Act of 1835 is not referred to in the arguments, or in the judgment as reported: but that Act was said in *Mayor of Lincoln v. Holmes Common* (*e*) to have materially altered the position of the freemen so as to prevent a corporation holding property in trust for them from being rateable. And the decision in *R. v. Mayor, etc., of York* seems to have anticipated, and perhaps gone beyond, the subsequent decision in *Jones v. Mersey Docks*, that a person receiving a benefit from the occupation of land cannot get rid of the liability to be rated by showing that he is merely a trustee for others.

Occupation of common pastures for the purposes of the franchise.—In *Trenfield v. Lowe* (*f*) a question arose as to the meaning of the words “actual occupation” in s. 18 of the Reform Act, 1832 (*g*). The bailiff and bailiff burgesses of Chipping Sodbury were owners of inclosed pasture land, divided by metes and bounds into portions called acres, and by immemorial custom, as each acre became vacant, they invested some inhabitant of the town with the possession of it, to hold for his life if he should

(*x*) (1837), 6 A. & E. 419.

(*y*) The cases relied on were those which were subsequently overruled in *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443: *vide supra*, pp. 132—134.

(*z*) (1810), 13 East, 155; *supra*, p. 420.

(*a*) (1823), 1 B. & C. 389: *vide supra*, p. 420.

(*b*) (1837), 6 A. & E. 419.

(*c*) 5 & 6 Will. 4, c. 76: *vide supra*, p. 124. But see also note (*r*), *infra*, p. 423.

(*d*) (1865), 11 H. L. Cas. 443.

(*f*) (1869), L. R. 4 C. P. 454.

(*e*) (1867), L. R. 2 Q. B. 482; *infra*, p. 423. (*g*) 2 Will. 4, c. 18.

continue to reside in the town, subject to the rules and orders of the bailiff and burgesses. The person invested drained, manured, and mowed his acre : but by the custom the bailiff and burgesses granted the after grass of all the acres each year to a limited number of other inhabitants, each of whom was entitled to depasture a cow for five weeks from September 10th, and afterwards the land was thrown open to all the inhabitants until December 15th, to depasture sheep and cattle. It was contended on the authority of *R. v. Tewkesbury* (*h*) that the bailiff and burgesses were the real occupiers, but the court held that the holder of each acre was entitled to a vote, as being in "actual and *bonâ fide* occupation" within s. 18 of the Reform Act, 1832. It appeared that each holder of an acre was in fact separately rated to the poor-rate as an occupier, and KEATING, J., in his judgment, said that no one else could be so rated.

The distinction between the facts in *Trenfield v. Lowe* (stated above) and those in *R. v. Tewkesbury* and *R. v. Sudbury* (*i*) is clear. In *Trenfield v. Lowe* each holder of an acre could go upon his land at any time of the year, and do anything there not inconsistent with the rights of pasture possessed by other persons under the rules, and he exercised his own peculiar rights over his own holding ; whereas in *R. v. Tewkesbury* and in *R. v. Sudbury* the persons whose cattle were turned in had no definite portion of the land assigned them. It may also be noticed that the cases of *R. v. Tewkesbury* and *Trenfield v. Lowe* are complementary to each other. In the former case the trustees in whom the after-math was vested were held rateable : in the latter case, the person having the right to take the first crop of grass was held to be an occupier, and had, in fact, been rated.

The measure of the value of land subject to rights of common.—In some of the cases above cited there was an occupier of land, having the exclusive right of mowing the grass, etc., during part of the year, who was rated for his occupation (*k*), while during the rest of the year the land was subject to rights of common, for which the owners of those rights were rated, either personally (*l*) or through a corporation or trustees in whom the rights were vested (*m*). In these cases the person who occupied subject to the rights of common was rated for the value of his occupation as diminished by the existence of those rights : and, provided the common rights were also rated separately, no part of the value of the land escaped from being rated. In some cases,

(*h*) (1810), 13 East, 155 ; *supra*, p. 420.

(*i*) (1823), 1 B. & C. 389 ; *supra*, p. 420.

(*k*) See *Trenfield v. Lowe* (1869), L. R. 4 C. P. 454, *supra*.

(*l*) As in *R. v. Watson* (1804), 5 East, 480 ; *supra*, p. 419.

(*m*) See *R. v. Tewkesbury* (1810), 13 East, 155 ; *supra*, p. 420.

however, the only use made of land was the exercise of common rights over it (*n*), the ownership and management of the land being vested in a municipal corporation. As long as the corporation were rated, as representing the owners of the common rights, the full value of the land was rated. But the question arose whether the corporation ought to be rated (in the same way as a private person occupying the lands would be rated) for the value of the occupation as diminished by the existence of the common rights : in other words, whether the owners of the common rights should be regarded as exercising them adversely to the corporation, or the corporation should be regarded as trustees for the commoners.

The Holmes Common Case.—In *Mayor of Lincoln v. Holmes Common* (*o*) the facts were as follows: Certain common pasture lands were vested in the corporation as lords of the manor, but only the freemen were entitled to rights of pasturage. Previous to the passing of the Municipal Corporations Act, 1835 (*p*), the corporation consisted of freemen only. The freedom of the city (whether before or after the Act) could be obtained only by birth or servitude (*i.e.*, by being the son of a freeman, or by apprenticeship to a freeman). The corporation, out of their corporate funds, maintained the fences of the common, preserved the rights of the freemen from being infringed, and paid a commons-warden to check the illegal stocking of the common, inflicting fines, part of which were paid into the corporate funds ; but these fines did not cover the cost of salaries and repairs, so that the corporation were absolute losers in respect of the common. Each freeman (if resident) had the right of depasturing all the year round two head, and no more, of cattle or horses. Neither the corporation nor any member of it, as such, claimed the right to stock the common or had ever stocked it. The overseers rated the corporation, and the questions raised by the case were (1) whether the corporation were liable to be rated ; and (2), if so, whether the rate ought to be reduced to nothing. The court decided in favour of the corporation.

COCKBURN, C.J., in giving judgment, said (*q*) :

“ The corporation are not liable to be rated. We can distinguish this case from *R. v. Mayor, etc., of York* (*r*), and the other cases which preceded

(*n*) As in *R. v. Sudbury* (1823), 1 B. & C. 389 ; *supra*, p. 420 ; *R. v. Mayor, etc., of York* (1837), 6 A. & E. 419 ; *supra*, p. 421.

(*o*) (1867), L. R. 2 Q. B. 482.

(*p*) 5 & 6 Will. 4, c. 76. Under that Act burgesses could be qualified only by occupancy and payment of rates : see s. 13. Similar provisions are to be found in s. 9 of Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which is now in force.

(*q*) L. R. 2 Q. B., at p. 489.

(*r*) (1837), 6 A. & E. 419 ; *supra*, p. 421. This case was argued in 1836, but it is possible that the rate appealed against was made before September 9th, 1835, the date of the Municipal Corporations Act : see 6 A. & E., pp. 425, 430, where reference

it, by referring to the complete alteration which the Municipal Corporations Act has introduced in the position of the freemen relatively to the corporation. In those cases, the freemen were an integral part of the corporation ; or rather I should say they were the corporation. Since the Municipal Corporations Act the freemen have been entirely detached from the corporate body. They are now no longer a part of the municipal corporation, and therefore do not stand to the corporation in the relation in which the freemen did when these cases were decided. The corporation are the owners and occupiers, subject to the right which the freemen have to depasture certain cattle on those lands ; and it appears that the enjoyment which the freemen have in respect of the right of pasture on those lands exhausts what may be called the profit of the land. There is nothing left for the benefit of the corporation ; they have no beneficial interest whatever in the land. . . . They occupy subject to the right of the freemen. They cannot be said to stand in the position of trustees, and the freemen in the position of *cestui que trust*. . . . The corporation are owners and occupiers of the common subject to a *profit à prendre* (s), which exhausts the whole value of the land, and leaves no beneficial value to the occupation of those persons who are owners and occupiers ; therefore, I think according to the principle which is still law, notwithstanding the decision in *Jones v. Mersey Docks* (t), the corporation are not liable to be rated."

And BLACKBURN, J., said (u) :

"I am of opinion that the rate should be reduced to nothing, which is substantially the question the parties desire to have decided. The general rule is that established by the Parochial Assessments Act, that the rate which is to be levied on the occupier is to be calculated upon the amount of the rent which would be got from a hypothetical tenant from year to year. *Jones v. Mersey Docks* (t) decided that where the occupation is such that it does produce profit, it is immaterial whether the rent is paid to a person to his own use, or is paid over by him to a charity, or to a *cestui que trust*, or any one else ; but in order that there should be a rate, there must be a rent ; and if the hypothetical tenant would pay nothing for the occupation, there can be no rate. I think in this case the corporation are the occupiers of this land : they are the persons who have the control over it, and who appoint the servants to look after it. Although they are the persons in the occupation of the land, yet the actual benefit derived from the land belongs to the freemen of the corporation. Now, if the corporation, in letting to a hypothetical tenant, are to be considered to let to him their occupation with the right of pasture, doubtless they would obtain a rent for it, but if all that they have to let to the hypothetical tenant is the occupation of the land, subject to the right of the freemen to take the pasture by the mouths of their cattle, then it is plain enough that the hypothetical tenant would not give a farthing for it, but probably would require to be paid for the burthen he took, and consequently there would

is made to the year 1834. Whatever may have been the precise date of the rate, neither in the arguments nor in the judgment is it suggested that the passing of the Municipal Corporations Act, 1835, would affect the question as to future rates.

(s) For the distinction between a *profit à prendre* and an easement (which it closely resembles) see Gale on Easements, at pp. 1, 8: *Manning v. Wasdale* (1836), 5 A. & E. 758, at p. 764 ; *Blewett v. Tregonning* (1835), 3 A. & E. 554, at p. 575 ; and *Bailey v. Appleyard* (1838), 8 A. & E. 161 : see also *Race v. Ward* (1855), 4 E. & B. 702.

(t) (1865), 11 H. L. Cas. 443, *supra*, pp. 132—134.

(u) L. R. 2 Q. B., at p. 490.

be no rent upon which a rate could be assessed. The question then is, what is the nature of the right the freemen have; is it such that the hypothetical tenant would find the occupation a burthen instead of a profit? Before the Municipal Corporations Act, when the freemen were members of the corporation, the occupation was in fact the beneficial occupation of the body corporate, and accordingly the hypothetical tenant, coming in the place of the corporation, would have enjoyed the rights of the freemen and had the profits of the land, but since that Act the freemen are not now members of the corporation, but each of them has the right to put two cattle on the common, and that right must be considered in the nature of a right of common in gross. I think, therefore, that the hypothetical tenant must be taken to come into occupation of the land subject to that right."

Remarks on the Holmes Common Case.—It is difficult to say whether *Mayor, etc., of Lincoln v. Holmes Common* (*x*) is really in harmony with *Jones v. Mersey Docks* (*y*), and with subsequent cases. It is to be noticed that the answers of the majority of the judges, which were adopted by the House of Lords in *Jones v. Mersey Docks*, were prepared by BLACKBURN, J., who was also a party to the decision subsequently given in *Mayor, etc., of Lincoln v. Holmes Common*. In the former case, the Dock Board (who were held rateable) received an income, but received it for the benefit of others who were not members of the Board; in the latter case, the Corporation of Lincoln (who were held to be not rateable) received no income from the common lands, the entire value of the occupation of those lands being in the hands of persons who were not members of the corporation. But, if the corporation had received payments from those freemen who exercised the right of turning cattle on the common lands, and had been obliged to divide the sums thus received among the general body of freemen, then the case would have been undistinguishable from *Jones v. Mersey Docks*. It has been already pointed out (*z*) that in the judgment of BLACKBURN, J., there are to be found some traces of the fallacy that the making of a pecuniary profit is essential to the existence of rateability; but this has now been finally swept away by the House of Lords in *London County Council v. Erith and West Ham* (*a*). That case decides that the actual occupiers must be taken into account as possible hypothetical tenants, and that one must ask whether the occupiers (if they were not the owners) would be willing to give a rent for the land which they occupy. If they would give such a rent, they are rateable even though they make no pecuniary profit out of their occupation. It must further be noticed that the *Holmes Common Case* ignores the question—"What rent would the freemen give for the land, if they were not the owners of the rights of pasture over it?"

(*x*) (1867), L. R. 2 Q. B. 482.

(*y*) (1865), 11 H. L. Cas. 443.

(*z*) *Supra*, pp. 133, 134.

(*a*) [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413; *supra*, p. 141.

CHAPTER XXIII.

TITHES.

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Rateability of tithes and tithe commutation rentcharge.—

The rateability of these classes of property is beyond all dispute, but it may be useful to note the history of the law. The statute 43 Eliz. c. 2 authorises "taxation of every inhabitant, parson (a), vicar and other, and of every occupier of lands, houses, tithes impropriate, or propriations of tithes, coal mines or saleable underwoods in the parish." "Propriations" (or, more correctly, "appropriations") of tithes are tithes appropriated by spiritual corporations, such as bishops, monasteries, etc., to their own use: "tithes impropriate" are tithes in the hands of lay impropriators, to whom (or to whose predecessors in title) the tithes have been granted by the Crown (b). Tithes in the hands of the actual incumbent are not specially mentioned in the statute 43 Eliz. c. 2, but that Act directs that "every inhabitant (c), parson, vicar, and

(a) The word "parson" signifies the rector of a church: see Jacob's Law Dictionary. In *The Vicar of Pancras Case*, Godbolt, 50, 63, decided in 29 Eliz., the word "parson" is used by itself in contrast with "vicar," in the same way as the word "rector" is now commonly used.

(b) See Nolan's Poor Law, Vol. I., p. 144; Stephen's Commentaries, 14th Edit. Vol. II., pp. 646, *et seq.*

(c) As to the position of the "inhabitant" when not an occupier, *vide supra*, pp. 2, 3.

other " shall be rated ; and it appears to have been the practice from very early times to rate the " parson or vicar " for his tithes, or (if he let them) to rate the lessee (*d*). But the form of the section above quoted suggests that the parson or vicar was to be rated because he was an inhabitant, or was to be rated on the same basis as an inhabitant, and not because he was an occupier of rateable property (*e*). Now an inhabitant, before the passing of the Poor Rate Exemption Act, 1840 (*f*), was rateable in proportion to his ability, and the overseers were able to make allowances in respect of any charges or deductions which tended to diminish that ability. But as the difficulty of rating inhabitants fairly in respect of their ability (apart from the value of any lands, houses, etc., which they occupied) led to the exemption of inhabitants (as such) from rating, the practice appears to have arisen of rating the " parson and vicar " only in respect of his ability derived from tithes. But in some of the cases the parson or vicar is spoken of as if he were an occupier of his tithes, and as if his tithes were included among those classes of property the occupiers of which were specially made rateable under 43 Eliz. c. 2 (*g*). It is hardly possible indeed to give any effect to the special mention of the " parson and vicar," if he is not to be rated for his tithes (*h*), since he would be rateable for his parsonage and glebe land as an " occupier of lands and houses "; and the special mention of " tithes impropriate," etc., in the hands of laymen suggests that the tithes of the clergy were already covered by the mention of the " parson and vicar " (*i*). It will, however, be found, when we come to deal with the question of deductions from the gross amount of tithe rentcharge (*k*), that the principle of regarding the tithe owner as an occupier of tithes, in a position analogous to that of an occupier of land, has had a material effect

(*d*) See *R. v. ———* (1672), 3 Keb. 255, which suggests that the words " parson, vicar," were inserted in the statute to make it clear that the clergy were liable " notwithstanding Magna Charta, *quod ecclesia sit libera*." See also *R. v. Turner* (1718), 1 Const. 126 ; 1 Stra. 77 ; *R. v. Lambeth* (1722), 8 Mod. 61 ; 1 Const. 127 ; as to the latter case, see also p. 438, *infra*. *R. v. Skingle* (1718), 1 Stra. 100 ; 1 Const. 127 ; in which a " parson " was rated for his tithes, is a good illustration of the confusion which prevailed on the subject, for it misquotes the words of the statute, 43 Eliz. c. 2. The case decided that " tithes " were " tenements " within a local Act. See also *Powell v. Bull* (1718), Comyns, 265 ; *R. v. Barker* (1837), 6 A. & E. 388. But in *R. v. Nevill* (1846), 8 Q. B. 452, a vicar's tithes were held not to be within the word " tenements," as used in a local Act. *Cf. R. v. Mosley* (1823), 2 B. & C. 226, *supra*, p. 317.

(*e*) See the remarks of BAYLEY, J., in *R. v. Bucks JJ.* (1823), 1 B. & C. 485, at p. 488 and in *Chatfield v. Ruston* (1825), 3 B. & C. 863, at p. 868. See also *R. v. Christopherson* (1885), 16 Q. B. D. 7, *infra*, p. 433.

(*f*) 3 & 4 Vict. c. 89, set out in Appendix II., *infra* : see also p. 4, *supra*.

(*g*) See the cases cited in note (*d*), *supra*.

(*h*) Unless he were rated for Easter offerings, burial fees and the like : see *R. v. Chapel* (1840), 12 A. & E. 382, at p. 387 ; *R. v. Carlyon* (1789), 3 T. R. 385 ; and *R. v. Christopherson* (1885), 16 Q. B. D. 7 ; *infra*, p. 433.

(*i*) See *R. v. Lacy* (1826), 5 B. & C. 702, at p. 709.

(*k*) *Vide infra*, pp. 440—447.

upon the amount at which the owner of tithe rentcharge is now assessed.

The partial exemption of tithe rentcharge and payments in lieu of tithes, under the Tithe Rentcharge (Rates) Act, 1899, has been already referred to (*l*).

The Tithe Act, 1836, and the Poor Rate Exemption Act, 1840.—The Tithe Act, 1836 (*m*), which substituted a tithe commutation rentcharge for tithes, by s. 69 enacted that “every rentcharge payable instead of tithes shall be subject to all parliamentary, parochial, and county and other rates, charges, and assessments in like manner as the tithes commuted for such rentcharge have heretofore been subject.” And by s. 37 of the same Act, in estimating the value of the tithes, the commissioners were directed to make no deduction in respect of rates, assessments, etc., and whenever the tithes had been let or compounded for on the principle of the rent or composition being free of rates, etc., such an addition was to be made on account thereof as should be an equivalent. The Tithe Act, 1836, consequently neither added to nor subtracted from the then existing burden of rates imposed upon the “parson or vicar” in respect of his tithes. The Poor Rate Exemption Act, 1840 (*n*) (which exempts an inhabitant from rateability in respect of his stock-in-trade or other property), specially provides that nothing in the Act shall in anywise affect the liability of any parson or vicar.

Effect of the Parochial Assessments Act, 1836.—The Parochial Assessments Act, 1836 (*o*), appends to the definition of “net annual value” a proviso, which is said to have been introduced with reference to tithes (*p*). The meaning of that proviso is very doubtful, and it is not clear that it has any operation (*q*); but at all events it has had no effect on the rating of tithes or tithe rentcharge, whatever may have been the object of its insertion in the Act. But the definition of “net annual value” makes that value equivalent to a rent which is free of “tithe commutation rentcharge”; as long as tithe commutation rentcharge is itself rated in the hands of the tithe owner, it is obvious that, in rating the land, so much of the value of the land as is (so to speak) diverted into the hands of the tithe owner, must be deducted from that

(*l*) *Supra*, pp. 116, 117.

(*m*) 6 & 7 Will. 4, c. 71.

(*n*) 3 & 4 Vict. c. 89: set out in Appendix II., *infra*.

(*o*) 6 & 7 Will. 4, c. 96: set out in Appendix II., *infra*.

(*p*) See *R. v. Capel* (1840), 12 A. & E. 382, at pp. 408, 411, and the *Hackney Tithe Case, R. v. Goodchild* (1858), E. B. & E. 1, at p. 28. The object was to preserve the law as laid down in *R. v. Joddrell* (1830), 1 B. & Ad. 403, *infra*, p. 429. See the evidence given before the House of Lords Committee on the Law relating to Parochial Assessments, 1850, questions 1821—1824.

(*q*) See *R. v. Capel* (1840), 12 A. & E. 382, at pp. 411, 415.

value. Otherwise that part of the value of the land which is represented by tithe rentcharge will be rated twice over.

Cases decided just before and after the passing of the Parochial Assessments Act, 1836.—The Act of 1836 for the first time made it compulsory to levy the rate on the net annual value, and before the passing of that Act it was a common practice to levy the rate, not on the full annual value, but on some fixed proportion of the annual value of all the hereditaments in the parish (*v*). In *R. v. Joddrell* (*s*), decided before the passing of the Parochial Assessments Act, 1836, the rector, who was rated for a corn rent substituted for tithes under a local Act, appealed against the rate, objecting (1) that the tenants of farms (who were rated at the actual rack-rents) should be rated at the rack-rent actually paid, plus the corn rent paid to the rector; (2) that as the rector was rated at the full amount of his corn rent, subject only to a deduction for poor rate, the tenants of farms should have been rated for the profit accruing to them beyond the amount of rent paid, and beyond the interest of capital employed and the expenses of cultivation, including compensation for the farmer's trouble and labour and superintendence (the existence of which profit was admitted at quarter sessions); and (3) that the corn rent was subject to further deductions for land tax and ecclesiastical dues, and because the rector had to do or provide for the duties of incumbency. The questions raised by the last objection are considered below (*t*); but it is desirable to notice here the following remarks of PARKE, J., in delivering the judgment of the court as to the first and second objections (*u*):

“The great point to be aimed at in every rate is equality, and whatever is the proportion at which, according to its true rateable value, any property is rated (*x*), is the proportion in which every other property ought to be rated. The first thing upon every rate, therefore, is to ascertain the true rateable value of every property upon which the rate is to be imposed, and the next to see upon what proportion of that value a rate is in fact imposed. In the case of land, the rateable value is the amount of the annual average profit, or value of the land, after every outgoing is paid, and every proper allowance made; not, however, including the interest of capital, as the sessions have done, for that is a part of the profit (*y*). Tithe is an outgoing, and therefore the corn rent, or compensation for tithe in this case, is not to be added to the amount upon which the farmer is rateable; and in respect of that portion of the annual profit or value which consists of tithe or corn rent, the rector

(*v*) See the cases cited in note (*c*), *supra*, p. 150.

(*s*) (1830), 1 B. & Ad. 403.

(*t*) *Vide infra*, pp. 440—445.

(*y*) This proposition appears to the writer hopelessly untenable. If the tenant

borrowed capital, the interest would be as clearly an outgoing as the wages paid by him to his labourers: if he used his own capital, he would have to forego the interest which he would have received had he invested that capital in any other way.

(*u*) See 1 B. & Ad., at pp. 407, 408.

(*x*) See note (*c*), *supra*, p. 150.

is himself to be assessed. We think, therefore, that the sessions were right in overruling the first objection.

“The second objection was that the farmer’s share of profit ought to have been rated, or, which is the same thing, that the appellant should have been rated proportionately less; and that objection should in our opinion have prevailed. *Of the whole of the annual profits, or value of land, a part belongs to the landlord in the shape of rent, and part to the tenant (z): and wherever a rate is according to the rack-rent (the usual and most convenient mode) it is in effect a rate on a part of the profit only.* It must, therefore, in the next place, be ascertained what proportion the rent bears to the total annual profit or value, and that will show in what proportion all other property ought to be rated. If, for instance, the rent is one-half or two-thirds of the total annual profit or value of land, the rate on all other property should be on a half or two-thirds of its annual value. In this case it is clear that there was a share of profit received by the tenant upon which there has been no rate, and, in that respect, the farmers were assessed in a less proportion of the true annual profit or value than the appellant. The sessions were therefore wrong in disallowing this objection, and they ought to ascertain the ratio which the rent of land bears to its average annual profit or value, and assess the appellant for his tithe rent in the same ratio.”

The decision in the judgment set out above obviously gave a considerable advantage to the tithe owner, and when the Parochial Assessments Act, 1836, was passing through parliament, an endeavour was made (on behalf of the clergy) to retain that advantage (*a*); and this result was supposed to be attained by the addition of the proviso to the definition of “net annual value” in s. 1 of the Parochial Assessments Act, 1836 (*b*), that “nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.” In *R. v. Capel* (*c*), decided shortly after the passing of the Act, it was contended that the definition of “net annual value” could not apply to tithes, and that the history of the insertion of the proviso showed that the definition was intended not to apply to tithes. But Lord DENMAN, C.J., in giving judgment, said that the definition applied to tithes and that the court could not judicially take notice of the history of the proviso; that it was very difficult to discover a definite meaning to all parts of the proviso; and that

(z) In *R. v. Capel* (1840), 12 A. & E. 382, at p. 413, Lord DENMAN, C.J., pointed out that if (as was admitted) there was profit accruing from the occupation beyond the rent, the interest of capital employed, expenses of cultivation, and compensation for trouble, labour, and superintendence, the rent was manifestly below that which the land was annually worth. This however appears to assume that the “compensation for trouble, labour, and superintendence” was sufficient to induce the tenant to undertake the liability to pay the rent. If not, some further tenant’s profit must be allowed for. See also the extract from the same judgment, cited on p. 431, *infra*.

(a) See the evidence given before the House of Lords Committee on the Law relating to Parochial Assessments, 1850, answers 1821—1824. See also *R. v. Capel* (1840), 12 A. & E. 382, at pp. 408, 411, and the *Hackney Tithe Case*, *R. v. Goodchild* (1858), E. B. & E. 1, at p. 28.

(b) Set out in Appendix II., *infra*.

(c) (1840), 12 A. & E. 382.

possibly it would have no operation (*d*). The judgment also contained the following criticism of part of the passage cited above from the judgment in *R. v. Joddrell* (*e*) which must now be treated as overruled upon the point here referred to (*f*):

“ This important sentence expresses no general proposition of law, nor any conclusion of fact from any premises stated in the case : it is an assumption in the most general terms upon a point much questioned by those who have made such matters their peculiar study. It is certainly inconvenient to make such an assumption ; the very terms “ profit ” and “ value,” used as synonymous, raise arguments as to their meaning, and the whole proposition is controverted. It might be urged, with as much show of reason, that the rack-rent is the consideration which it is worth while to give, beyond the rates, charges, and outgoings, for the right to occupy and take the actual produce, and must always represent the net annual value beyond those outgoings, and beyond a fit compensation to the tenant for his risk, labour, and superintendence. . . . One consideration is supposed to be of the utmost weight. If the landlord held the farm in his own hands, the annual value would consist of the amount of rent for which it might be let, with the addition of the tenant's profit. He would in that case have nothing to deduct but the ordinary outgoings and his bailiff's wages. But who shall say that these wages might not be equal to the estimated profits of the tenant, or, in the simpler case of the owner being entirely his own manager, that his personal labour withdrawn from other profitable occupation was not of equal value ? As a proposition of law we cannot assert this, nor as a fact deducible from scientific axioms too clear for controversy. That discussion we purposely decline, preferring to say merely that *R. v. Joddrell* (*g*) does not convince us that there was any difference in the legal liabilities of the tithe owner and the occupier of land.”

The Tithe Act, 1891.—The Tithe Act of 1891 (*h*) makes tithe rentcharge as defined by that Act (*i*) payable by the owner of the lands out of which it issues, notwithstanding any contract between him and the occupier of the lands : and where the occupier is liable under any contract made before the passing of the Act to pay the tithe rentcharge, he ceases to be bound by that contract, but is liable to pay to the owner such sum as the owner has properly paid on account of such tithe rentcharge. The Act, by s. 6 (1), enacts as follows : “ Any rate to which tithe rentcharge is subject shall be assessed on and may be recovered from the owner of the tithe rentcharge, in the like manner and by the like process as on and from any occupying ratepayer ; and so much of any Act as authorises any rate on tithe rentcharge to be assessed

(*d*) See 12 A. & E., at pp. 411, 415.

(*e*) (1830), 1 B. & Ad. 403 : *vide supra*, p. 430, where the sentence referred to is printed in *italics*.

(*f*) See 12 A. & E., at p. 414.

(*g*) (1830), 1 B. & Ad. 403.

(*h*) 54 & 55 Vict. c. 8, s. 1.

(*i*) See s. 9 (2). The definition does not include a rentcharge payable under the Extraordinary Tithe Redemption Act, 1886 (49 & 50 Vict. c. 54), which is exempt from rating under s. 4 (5) of that Act, the rates having been deducted in calculating the capital value under s. 3.

on or recovered from the occupier of any lands out of which the tithe rentcharge issues is hereby repealed." The section further provides that if the rate cannot be recovered from the owner of the tithe rentcharge, the county court may order the owner of the lands to pay the rentcharge to the rate collector (*k*). By s. 8 the county court may remit part of the tithe rentcharge, issuing out of land used solely for agricultural or pastoral purposes or for the growth of timber or underwood, when it exceeds two-thirds of the annual value of the land as ascertained for the purposes of income tax, and may remit part of the rates proportionate to such remission.

Under the Tithe Act, 1891, the tenant of land subject to tithe rentcharge pays to his landlord a sum which includes both the landlord's rent and the tithe rentcharge: consequently, in ascertaining the rateable value of the land, which, under the Parochial Assessments Act, 1836, is a rent "free of tithe rentcharge," the amount of the rentcharge (*l*) must be deducted from the total payment made by the tenant, and the rentcharge will be separately rated in the hands of the tithe owner.

Payments supplemental to, or in lieu of tithes.—Where tithes are extinguished, and a rent or rentcharge is substituted for those tithes, such a rent or rentcharge is rateable in the same way as the tithes for which it is substituted were rateable (*m*), unless the rateability is taken away by express words in the Act or other document creating the rent or rentcharge (*n*). Where, however, tithes are not extinguished, and a payment in the nature of tithes is made payable to the parson or vicar, such payment is not rateable (*o*), even though there may be no words expressly conferring an exemption.

In *R. v. Great Hambleton* (*p*), a local Act enacted that the tithes of a parish should be held in fee by the Duke of Buckingham,

(*k*) Before this Act the rates on tithe rentcharge were recoverable only by distress against the occupier of the lands, and not against the owner of the tithe rentcharge: see *Lamplugh v. Norton* (1889), 22 Q. B. D. 452. The decision in that case probably led to the alteration of the law as to recovery of the rates in the Tithe Act, 1891. See further, as to recovery of arrears of tithe due at the passing of the Act, *Roberts v. Potts*, [1894] 1 Q. B. 213.

(*l*) Not the nominal amount, but the increased or reduced amount as fixed by the table for the time being in force.

(*m*) *Lowndes v. Horne* (1779), 2 Wm. Bl. 1252.

(*n*) *R. v. Boldero* (1825), 4 B. & C. 467; *Mitchell v. Fordham* (1827), 6 B. & C. 274; *R. v. Wistow* (1836), 5 A. & E. 250. See also *R. v. Lacy* (1826), 5 B. & C. 702, decided on Highway Acts, which are contrasted with 43 Eliz. c. 2, and *cf. R. v. Toms* (1780), 1 Doug. 402, and *Rann v. Pickin* (1782), Cald. 196, *infra*, pp. 436, 437. As to what words are sufficient to take away rateability, *vide infra*, p. 437.

(*o*) *R. v. Great Hambleton* (1834), 1 A. & E. 145; *R. v. Christopherson* (1885), 16 Q. B. D. 7, *infra*, p. 433. See also *Edwards v. St. Olave's*, Ryde's Rat. App. (1891—1893), 293, *infra*, p. 434, and *cf. R. v. Shaw* (1848), 12 Q. B. 419, *infra*, p. 437. In that case, however, the decision turned on the express terms of an exemption.

(*p*) (1834), 1 A. & E. 145.

who was owner of part of the lands in the parish, and that all the duke's lands in the parish should be charged with an annuity payable to the vicar, who had previously enjoyed the small tithes, and who was to receive such annuity in lieu of all his vicarial dues : it was held that there was no extinguishment of the tithes, even as to the tithes payable in respect of lands belonging to the duke ; and that the vicar was not rateable for the annuity paid to him. It may be noticed that the transfer of the tithes from the vicar to the duke in effect converted those tithes into " tithes impropriate," which are expressly made rateable by the statute, 43 Eliz. c. 2 (*q*). If these " tithes impropriate " were rated, and the payment made to the vicar were also rated, part of the property would be rated twice over, unless the amount of the annuity were deducted from the " tithes impropriate."

In *R. v. Christopherson* (*r*), a local Act directed that the corporation of the borough of Falmouth should make a rate on the "houses, shops, warehouses, cellars, and outhouses" in the borough (which formed part of the ecclesiastical parish), to be paid to the parson. The Act did not extinguish the tithes payable to the parson, but directed that they should continue to be paid to him : these tithes had been commuted under the Tithe Commutation Act, 1836, and were separately rated. It was held that the parson was not rateable for the amount paid to him out of the special rate, because that was not paid in lieu of tithes (*s*). In the course of his judgment, Lord ESHER, M.R., said (*t*) :

"Tithes in the hands of the parson are not mentioned in the Act 43 Eliz. c. 2 ; only tithes impropriate, or propriations of tithes are mentioned ; but it is obvious that in old days, when tithes were received in kind, they were matters that could be easily seen and estimated by the overseers. Then, when tithes came to be commuted, either by custom or statute, and the parson received, instead of tithes, an annual money payment, it was impossible, upon the assumption that the tithes were rateable under the Act of Elizabeth, to hold that the liability to the rate could be escaped by the commutation of the tithe into money. There might be more difficulty in estimating the amount, but it was reasonable to hold that, the tithes having been rateable, the money payment in lieu of them should be rateable also. It was, therefore, held that the parson was rateable in respect of money payments made in lieu of tithes, unless the Act under which they were made provided to the contrary. If, therefore, it could be said that the money payment here was a money payment in lieu of tithes, I should say that according to all the authorities the rector would be rateable in respect of it ; but, if it is a money payment not in lieu of tithes, and there is nothing in the Act to say that it shall be rateable, then to say that it should be rateable would be, in my opinion, going beyond any construction of the

(*q*) *Vide supra*, p. 426.

(*r*) (1885), 16 Q. B. D. 7.

(*s*) *Cf. Esdaile v. City of London Union* (1887), 19 Q. B. D. 431 ; *Ryde's Rat. App.* (1886—1890), 105, *infra*, pp. 447, 448.

(*t*) 16 Q. B. D., a 1 p. 13.

Act of Elizabeth, that has ever been adopted. It is not a tenement or hereditament, nor is it property of that visible and tangible sort which I have referred to, nor can it, in my opinion, be said to be made in lieu of tithes. It is a payment to be made in respect of houses, shops, and other buildings; but to be a payment in lieu of tithes, it must be a payment in respect of something in respect of which, but for the Act, tithes would have been payable. When a house is built on land it ceases to be titheable property, because no tithe can be payable in respect of a house. Now it seems to me that, according to the decisions, a parson was only rateable as such in respect of tithes or money payments in lieu of tithes strictly speaking, and, therefore, that the parson is not rateable in respect of this payment."

A local rate substituted for tithes.—In *Edwards v. St. Olave's* (u), the provision for the support of the rector of St. Olave's, Southwark, before the year 1817, had been from time immemorial certain ancient pecuniary payments, payable by the occupiers of houses and owners of estates. By 57 Geo. 3, c. vii., passed in 1817, which recites that the provision for the rector was insufficient, the annual sum of 600*l.* was directed to be paid to the rector by trustees, out of the rates to be levied for the purpose, and was to be "paid, taken, and received, in lieu and in full recompense and satisfaction of and for all tithes, and compositions or payments for tithes, and Easter offerings."

There was evidence that, before and after the passing of the Act, the rector had, in fact, been rated: but the court held that the rector was not rateable, first, because the ancient payments were not "tithes" (x) in the strict sense, and secondly, because the payment of 600*l.* a year was not in substitution for the old "tithes." It was pointed out that the evidence of actual rating was inadmissible in considering the nature of the payment under the local Act, because the construction of that Act was for the court to decide (y). COLLINS, J., said (z):

"The Act, 57 Geo. 3, c. vii., recites that the provision for the support of the rector had been certain ancient pecuniary payments, and that they were insufficient, and that it was expedient that better provision should be made. The sum of 600*l.* was not fixed because that was the amount of the 'tithes,' but the scheme of the Act was to maintain the rector adequately, and not merely to quantify the sum to be received for tithes. Suppose the amount of the old tithes had been only 10*l.*, it could not be said that 600*l.* was in substitution for those tithes. In my opinion there is no alternative between holding the whole or none of the 600*l.* to be in substitution for the old 'tithes.' The intention of the Act is to make a general provision for the rector outside tithes, and that the 600*l.* should be paid as a stipend, and not in substitution for tithes."

(u) Ryde's Rat. App. (1891—1893), 293.

(x) Cf. *Esdaile's Case*, *infra*, pp. 447, 448.

(y) The question how far payment or non-payment of rates can be taken into account in determining questions of rateability, is considered *supra*, p. 354.

(z) Ryde's Rat. App. (1891—1893), at p. 303.

Whether a parson is rateable for income other than tithes.—

We have already seen that the “parson or vicar” was (strictly speaking) rateable as an inhabitant, and not as an occupier of tithes (*a*) ; but in considering his ability as an inhabitant, the sum received by him in the form of tithes was always taken into account. There appears some conflict of opinion as to whether, in considering his ability as an inhabitant, his receipts from Easter offerings, dues, and fees ought not also to be taken into account (*b*). In *R. v. Carlyon* (*c*), the proprietors of tithes of fish (payable by a custom in Cornwall) were held rateable: the report of the case is not very clear, but the tithes appear to have been “tithes impropriate,” though for the moment in the hands of joint tenants of whom one was a parson (*d*). Lord KENYON, C.J., said (*e*) :

“The question is decided by the express terms of the Act, 43 Eliz. c. 2, which after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) tithes impropriate, and propriations of tithes, in respect of which the rate is to be made. The legislature intended that, when rates are made for the relief of the poor, every person should contribute according to the benefit which he receives within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said that only property which is visible should be rated ; but I think that is carrying the rule of exemption too far ; for oblations and other offerings which constitute the rectorial or vicarial dues are rateable.”

The correctness of the last sentence of the judgment above quoted was doubted by Lord ESHER, M.R., in *R. v. Christopherson* (*f*), and in the same case COTTON, L.J., said, “I can find no case where a parson has been held rateable” in respect of oblations and other offerings (*g*). As these oblations and offerings must have varied considerably from year to year, and their amount cannot have been easily ascertainable by the overseers, the practice probably was not to rate them, in accordance with the general rule relating to personal property (*h*) ; certainly in modern times there is no instance of an attempt to rate them. It must, however, be noticed that in *Rann v. Pickin* (*i*), the parson was held rateable for payments substituted for “tithes and other

(*a*) *Vide supra*, p. 427.

(*b*) The parson is, of course, rateable for his parsonage-house and the glebe land (if any) in his own occupation.

(*c*) (1789), 3 T. R. 385.

(*d*) In Nolan's Poor Laws, Vol. I., p. 145 n., it is said, “The question made respected a rate upon the lay impropiator's tithe of pilchards ; but the vicar was also rated for his share and no objection made.”

(*e*) 3 T. R., at p. 386.

(*f*) (1885), 16 Q. B. D. 7, at p. 14.

(*g*) See 16 Q. B. D., at p. 16. On p. 17, LINDLEY, L.J., seems to doubt Lord KENYON's dictum.

(*h*) *Vide supra*, p. 3.

(*i*) (1782), Cald. 196 ; 1 Const. p. 162 : *vide infra*, p. 437.

ecclesiastical dues," a decision which implies that those things for which the payments were substituted were themselves rateable. The "ecclesiastical dues" in that case, however, were already fixed by an earlier local Act; so that the case cannot be cited as authority for the proposition that ecclesiastical dues generally are rateable.

In *Frend v. Tolleshunt Knights (k)*, the rector of the parish of Tolleshunt Knights granted to the incumbent of a new district a yearly sum of 150*l.* charged on the glebe lands, tithes, etc., of the rectory, free of all deductions, rates, and taxes, etc.; it was held that the incumbent (who did not reside in the parish of Tolleshunt Knights) was not rateable, because he was not the parson, and had not an assignment of any specific portion of the tithe rent-charge (*l*).

What words are sufficient to exempt payments in lieu of tithes.—It is now proposed to notice the cases dealing with special Acts creating payments in lieu of tithes, and declaring such payments to be exempt from rates, etc. In *R. v. Toms (m)* by a local Act, 4 & 5 Phil. & Mary, which recited that there was no way to enforce the inhabitants to pay any other kind of tithes and duties to the vicars than they themselves should think meet, it was enacted that the inhabitants should pay their tithes, after the rate of 12*d.* for every 10*s.* rent, and every householder paying 10*s.* rent, or above, should be discharged of the four offering days, but his wife, children, or servants, taking their rights of the Church at Easter, should pay 2*d.* for their four offering days yearly. A later Act, 19 Geo. 3, c. 60, substituted for these payments a new rate, which was to be "in lieu and full discharge of all ancient payments, Easter offerings, tithes, and other ecclesiastical dues, claims and demands, heretofore paid or payable to the vicar (except surplice fees, and such stipends, donations, and bequests as have been heretofore, or shall be hereafter, bestowed upon the vicar for the time being)." The rate was to be paid to the vicar "clear of all taxes, deductions, charges, and expenses whatsoever, parochial, parliamentary, or otherwise howsoever." Lord MANSFIELD held (1) that the payments under the Act of Philip & Mary were not rateable under 43 Eliz. c. 2, because "they were in the nature of rents for houses, which are not rateable"; and (2) that the rate substituted for those payments was not rateable, by reason of the express exemption.

(*k*) (1859), 1 E. & E. 753; 28 L. J. M. C. 169.

(*l*) As to the rating of the rector, see *Lawrence v. Tolleshunt Knights* (1862), 31 L. J. M. C. 148, *infra*, pp. 443, 444.

(*m*) (1780), 1 Doug. 402. With the early history of this case (which related to the parish of St. Michael, Coventry) compare *Esdaile v. City of London Union* (1887), 19 Q. B. D. 431; Ryde's Rat. App. (1886—1890), 165, *infra*, pp. 447, 448.

But this case (so far as it decided that the payments under the Act of Philip & Mary were not rateable) is inconsistent with the later case of *Rann v. Pickin* (*n*), which related to another parish in Coventry. In that parish, the payments made under the same Act of Philip & Mary were abolished by another local Act (19 Geo. 3, c. 57), which was similar to the Act (19 Geo. 3, c. 60) on which *R. v. Toms* (*o*) was decided, save that it contained no clause providing that the new rate should be paid to the vicar "clear of all taxes, deductions, charges, etc.;" and on this ground the court distinguished the cases, and held that the sum paid to the vicar under 19 Geo. 3, c. 57, was rateable. The judgment of Lord MANSFIELD in *Rann v. Pickin* (*n*) is very short, and ignores his own decision in *R. v. Toms* that the payments made under the Act of Philip & Mary were not rateable. Assuming that decision to be correct, then the absence of express words creating an exemption in 19 Geo. 3, c. 57, on which *Rann v. Pickin* was decided, was immaterial; for it could not make the payments under that Act liable to be rated if the payments under the earlier Act of Philip & Mary (for which the later payments were substituted) were not liable to be rated.

In *Chatfield v. Ruston* (*p*), a private inclosure Act extinguished the tithes, and assigned to the vicar yearly rents issuing out of the lands formerly liable to tithes, to be paid "free and clear from all rates, taxes, and deductions whatsoever": it was held that these words were large enough to exempt the vicar from all rates and taxes. In *Mitchell v. Fordham* (*q*), by an inclosure Act, the rector was given in lieu of tithes a yearly corn rent, "free from all taxes and other deductions whatsoever, except the land tax." It was held that these words conferred an exemption from poor rate. ABBOTT, C.J., said: "It has been already determined (*r*) that 'parochial tax' meant 'poor rate.' Is there anything absurd in speaking of 'poor's tax' instead of 'poor's rate'? I take the former expression to be equally appropriate: . . . the very expression used in 43 Eliz. c. 2. is that a fund shall be raised 'by taxation.' If the money is raised by taxation it is a tax" (*s*).

In *R. v. Shaw* (*t*), by a local inclosure Act, an annual rent of 90*l.* was made payable to the rector out of lands inclosed, "free and clear of and from all deductions, defalcations, or abatements,

(*n*) (1782), Cald. 196.

(*o*) (1780), 1 Doug. 402.

(*p*) (1825), 3 B. & C. 863.

(*q*) (1827), 6 B. & C. 274.

(*r*) See *R. v. Toms* (1780), 1 Doug. 402, *supra*, p. 436.

(*s*) This decision was followed in *R. v. London Gas Light Co.* (1828), 8 B. & C. 54. In that case, under a local Act, lands embanked from the River Thames were to be "free from all taxes and assessments whatsoever": it was held that the lands were exempt from poor rate. Compare also *R. v. Barnby Dun* (1835), 2 A. & E. 551. In *R. v. Scot* (1790), 3 T. R. 602, an exemption of lands "from all public taxes, assessments, or charges," was held to extend to the poor rate.

(*t*) (1848), 12 Q. B. 419.

for or in respect of reprises or outgoings whatsoever," except land tax. The rent was to be in lieu of tithes arising out of the lands to be inclosed, and in lieu of some other tithes ; but the remaining tithes were not extinguished (*u*), and for these tithes the rector had been rated. It was held that, under the words above quoted, the rector was not rateable to the poor rate for the rent of 90*l*.

In *R. v. Lacy* (*y*), under a local inclosure Act, commissioners were to ascertain the "net value" of all great tithes and moduses, and to affix a "fair, clear annual rent" in lieu thereof. It was held that the rector was rateable for that rent *to the highway rate*. Two points are to be specially noticed in dealing with this case : (1) That it was a decision on the Highway Act, 13 Geo. 3, c. 78, s. 45, and not on 43 Eliz. c. 2 ; and (2) that the expression "net value" of the great tithes, etc., was held to refer only to the expenses of collection, and not to the liability to parochial rates ; the court relied on the fact that, in lieu of the small tithes, lands were allotted, which were clearly liable to be rated ; and it was thought probable that the inclosure Act would make the rector either wholly exempt, or wholly liable to be rated, in respect of the property given him in lieu of tithes.

Lessee of tithes ; when rateable.—We have already noticed (*z*) that in 43 Eliz. c. 2, tithes (other than tithes impropriate, and appropriations of tithes) are not specified in the list of properties, the occupiers of which are to be rated ; but as the Act imposes the rate upon "every inhabitant, parson, vicar, and other," tithes are brought into account as forming the ability of the "parson or vicar." The question arose whether the "parson or vicar" was to be rated in respect of tithes when they were in the hands of a lessee ; and in the cases relating to this point, the court asked who was the "occupier" of the tithes, as though the statute 43 Eliz. c. 2, had said that the occupiers of all tithes should be rated.

In *R. v. Bartlett* (*a*) it was held that a parson who let the tithes to his parishioners (apparently by a fresh letting each year) was rateable, because the letting was equivalent to an agreement that the parishioners should retain the tithes, the parson having a modus. A similar decision was given in *R. v. Turner* (*b*), in which the court are reported to have said that "the vicar ought to have been considered as the occupier of the tithes, though let out at certain rents." In *R. v. Lambeth* (*c*) the rector of the parish let the tithes to persons who farmed the tithes and underlet them to the respective tenants of the lands : it was held that the

(*u*) Cf. *R. v. Great Hambleton* (1834), 1 A. & E. 145, *supra*, pp. 432, 433.

(*y*) (1826), 5 B. & C. 702.

(*z*) *Vide supra*, p. 426.

(*a*) (1708), 16 Vin. Abr. 427 ; 1 Const. 127.

(*b*) (1718), 1 Const. 126.

(*c*) (1722), 1 Stra. 525.

persons who farmed the tithes were occupiers, and therefore rateable (*d*). In *R. v. Bucks, J.J.* (*e*) it was said that in *R. v. Lambeth* there was not a letting of the tithes (to the occupiers of the land), but a bargain *pro hac vice*, and that there might be a difference between that and a letting from year to year. But in *Chanter v. Glubb* (*f*) it was held that a lessee for a term of years of tithes impropriate was rateable to the highway rate as an occupier of tithes within the Highway Act, 13 Geo. 3, c. 78, although the tithes were retained by the occupiers of the land, under parol agreements made prospectively with the lessee, continuing from year to year, and treated by the parties as determinable only by six months' notice. In *R. v. Wilson* (*g*) a lessee of tithes was held rateable even though he made no profit out of them.

Rating of lands allotted in lieu of tithes.—In *Hackett v. Long Bennington* (*h*), under a local inclosure Act, all tithes were extinguished, and certain lands inclosed under the Act were allotted in lieu thereof. Of these, thirty acres were given to the vicar and the remainder to the lay rector, subject to certain corn rents issuing out of the lands allotted to the lay rector, to be paid to the vicar "clear of all parochial taxes, rates, dues and assessments whatsoever." The question to be decided was whether, in valuing the lands out of which the corn rents were payable, the lands were to be taken at their value or subject to a deduction in respect of the corn rents. It was contended that the corn rents were equivalent to tithe commutation rentcharge under the Tithe Act, 1836 (*i*), and therefore that a deduction should be made under s. 1 of the Parochial Assessments Act, 1836 (*k*), in order to arrive at a rent "free of tithe commutation rentcharge"; but the court held that the corn rents were not equivalent to rentcharge payable under the Tithe Act, 1836, and that no deduction should be made from the value of the lands in respect of such corn rents. It is clear that, inasmuch as the corn rents were to be paid to the vicar free of rates, if the amount of the corn rents had been deducted from the value of the land, part of that value would have escaped from being rated. Nor was any injustice done to the

(*d*) It is pointed out in *Chanter v. Glubb* (1829), 9 B. & C. 479, at p. 482, that *R. v. Lambeth* is "variously reported": see 1 Str. 525; 8 Mod. 61; 11 Mod. 375; Fortescue, 318. The report in 8 Mod. 61 makes the decision turn on the fact that the farmers of the tithes made a profit; but this "must be a mistake": *per* Lord TENTERDEN, C.J., in *Chanter v. Glubb, supra*.

(*e*) (1823), 1 B. & C. 485.

(*f*) (1829), 9 B. & C. 479.

(*g*) (1835), 5 Nev. & M. 119.

(*h*) (1864), 33 L. J. M. C. 137. There is another report of this case in 16 C. B. (N.S.), at p. 38, which appears to be untrustworthy. The headnote entirely misses the point decided, and in the last line on p. 53, the substitution of the word "vicarial" for "rectorial" has rendered part of the judgment of WILLIAMS, J., meaningless. The first sentence on the same page must also be wrong, since the Tithe Commutation Act was not passed till forty years after the local Act on which the case was decided.

(*i*) 6 & 7 Will. 4, c. 71: *vide supra*, p. 428.

(*k*) 6 & 7 Will. 4, c. 96: *vide supra*, p. 428.

rector ; for the lands allotted to him no doubt represented the full value of both great and small tithes, without any deduction for rates, or, in other words, the net value of the great and small tithes, plus the rates therein ; *pro tanto* those lands were larger and more valuable than they would have been had the rates been deducted from the tithes. And the corn rents payable to the vicar no doubt represented the net value of the small tithes. So that the interest in the lands remaining in the hands of the rector represented the net value of the great tithes, plus the rates on both great and small tithes. Moreover, the charge of the vicar's corn rents on the lands allotted to the rector was not a diminution of the value of the lands, but a distribution of that value between two persons : the tenant from year to year would not pay his landlord a less rent because part of the rent, when paid, would be handed over to the vicar. And if it be assumed that the lands subject to the corn rents were in the hands of the rector, to make a deduction from their value on account of the corn rents would be to fall into the error of "confounding the rateable value of the property occupied with the remunerative value to the particular occupier" (l).

Deductions from tithe rentcharge to ascertain rateable value.—Before going into details, it may be convenient to give a summary of the points which have been decided under this head.

In order to ascertain rateable value, the rentcharge must be assumed to be let (m), for the Parochial Assessments Act, 1836, s. 1 (n), applies ; but as the language of that Act is literally applicable only to corporeal hereditaments, it is necessary in the assessment of the tithe owner to proceed by analogy, which analogy must be as large and liberal as is necessary to effectuate substantial equality in the assessment, and at the same time compatible with the maintenance of the principle (o). Deductions must be made from the total income of the rentcharge in respect of the remuneration of a collector, legal costs and out of pocket expenses, bad debts and irregularity in payments, and tenant's rates and taxes (p) ; and for "tenths," "first fruits," and other ecclesiastical dues (q). But no deduction can be made on account of the personal services of the incumbent (r), nor on account of a

(l) See *R. v. Rhymney Rail. Co.* (1869), L. R. 4 Q. B. 276, at p. 283 ; *supra*, p. 249.

(m) *Dean and Chapter of St. Asaph v. Llanrhaidr-Yn-Mochnant*, [1897] 1 Q. B. 511 ; *Ryde & Konstam's Rat. App.* (1894—1904), 163 ; the *Hackney Tithe Case*, *R. v. Goodchild* (1858), E. B. & E. 1.

(n) Set out in Appendix II., *infra*.

(o) See the *Hackney Tithe Case*, *R. v. Goodchild* (1858), E. B. & E. 1, at p. 41.

(p) See the cases cited above in note (m). As to what are included in tenant's rates and taxes, *vide infra*, p. 441.

(q) See the *Hackney Tithe Case*, cited above ; *R. v. Capel* (1840), 12 A. & E. 382 ; and *R. v. Joddrell* (1830), 1 B. & Ad. 403.

(r) See *R. v. Joddrell* (1830), 1 B. & Ad. 403 : the *Hackney Tithe Case*, *R. v. Goodchild* (1858), E. B. & E. 1 : *et vide infra*, p. 443.

curate's salary, whether the curate be employed as a substitute for, or in addition to, the incumbent, and even though employment of a curate by the incumbent may be compulsory (*s*), nor on account of sums charged on the tithe and payable to the clergy of another parish (*t*); nor on account of the necessary repairs of the chancel (*u*); nor on account of interest and principal payable to the Governors of Queen Anne's Bounty for money borrowed for rebuilding the parsonage house, and secured by a mortgage of the tithe rentcharge (*x*). Nor can a deduction be allowed for the hypothetical tenant's profits, unless it is found that the amount allowed for collection is insufficient, and that something further must be allowed to induce the hypothetical tenant to take the rentcharge (*y*).

Rates and taxes.—The definition of "net annual value" in s. 1 of the Parochial Assessments Act, 1836 (*z*), makes that value a rent "free of all *usual* tenant's rates and taxes." These do not include the land tax (*a*), but they do include the poor rate (*b*), and the general rate, and the lighting rate made under s. 161 of the Metropolis Management Act, 1855 (*c*). As the owner of tithe rentcharge is now liable to pay only one half of certain rates (*supra*, pp. 116, 117), the deduction for "tenant's rates and taxes" must (in the writer's opinion) be reduced in proportion; though in answer to a question in parliament the Attorney-General is reported to have said that the whole rate is to be deducted as before the Tithe Rentcharge (Rates) Act, 1899 (*d*), and this view has been adopted at quarter sessions (*e*). But the hypothetical tenant would surely give a higher rent in consequence of the reduction in the rates which he will have to pay; and that half of the rates which is paid by the Crown does not seem to come within the words "tenant's rates and taxes."

The question whether any deduction can be made for income tax seems open to some doubt. In the *Hackney Tithe Cases* (*f*), and

(*s*) See *R. v. Sherford* (1867), L. R. 2 Q. B. 503, overruling (on this point) the *Hackney Tithe Case*, cited above, and other cases: *vide infra*, p. 444.

(*t*) *Lawrence v. Tolleshunt Knights* (1862), 31 L. J. M. C. 148, *infra*, pp. 443, 444.

(*u*) *Dean and Chapter of St. Asaph v. Llanrhaidr-Yn-Mochnant*, [1857] 1 Q. B. 511, cited above. See further as to this point, p. 445, *infra*.

(*x*) See the *Hackney Tithe Case* (1858), E. B. & E. 1, at p. 55.

(*y*) See the *St. Asaph Case*, *supra*, and the *Hackney Tithe Case* (1858), E. B. & E. 1, at p. 60; see also, p. 445, *infra*.

(*z*) Set out in Appendix II., *infra*.

(*a*) See the *Hackney Tithe Case*, *R. v. Goodchild* (1858), E. B. & E. 1, at p. 47.

(*b*) *Ibid.*: see E. B. & E. 1, at p. 43.

(*c*) *Hackney Tithe Case* (1858), E. B. & E. 1, at pp. 44—46: *et vide supra*, p. 157.

(*d*) See "The Times," May 29th, 1900.

(*e*) *Stokes v. Wisbech Assessment Committee* (1900), 64 J. P. 442; at the Isle of Ely quarter sessions. The respondents did not appear, so that the case was argued on one side only.

(*f*) (1858), E. B. & E. 1.

in the *Lamberhurst Tithe Case* (*g*), which was argued and decided with them, the several appellants (the owners of the tithe rent-charges), according to the special cases stated for the opinion of the court, claimed a deduction for "property tax" (*h*), by which was apparently meant income tax under Schedule A., which is chargeable under s. 2 of the Income Tax Act, 1853 (*i*), "for and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom." The arguments related mainly, if not entirely (*k*), to that tax, and to the power of the tenant to deduct the sum paid for the tax from his rent (*l*), and it was contended on both sides that the land tax and the "property tax" stood on the same footing. But in the judgment, without dealing with the arguments, COLERIDGE, J., merely said, "For what is called the tenant's property tax he is certainly entitled to an allowance." This was, therefore, a decision as to a claim which was not raised in the special cases, and was, at best, only an after-thought which occurred to counsel in the course of the argument. It is true that in *Williams v. Llangeinwen* (*m*), acting on the decision in the *Hackney Tithe Case*, it was admitted by counsel that "tenant's property tax" under Schedule B. of the Income Tax Act, 1853 (*i*), should be deducted, but the court were not asked to, and did not, decide the point. The claim for the deduction of "tenant's property tax" therefore rests solely on the authority of the *Hackney Tithe Case* (*n*), and it is submitted that on this point that decision is open to considerable doubt for the following reasons. It is believed that, as a matter of practice, no attempt is ever made to charge income tax both under Schedule A. and under Schedule B., where tithe rentcharge is actually let to a tenant; and the legality of any charge under Schedule B. is certainly far from clear. Further, the inadmissibility of the deduction had, before the decision of the *Hackney Tithe Case*, already been established. The deduction had been allowed in *R. v. Great Western Rail. Co.* (*o*), where the court complained of the insufficient statement of the facts, and of the shortness of the argument. But in *R. v. Southampton Dock Co.* (*p*), the question was re-argued at length, and the court disallowed the deduction. This decision was not cited in the *Hackney Tithe Case*, no doubt

(*g*) See E. B. & E. 1, at p. 22.

(*h*) See E. B. & E., at pp. 9, 12, 23.

(*i*) 16 & 17 Vict. c. 34.

(*k*) See E. B. & E., pp. 27, 29, 33. In the report in 27 L. J. M. C., at p. 237 (but not in the other report at all), the "property tax payable by the tenant in respect of his occupation" is mentioned, apparently after it was seen that the claim for a deduction for landlord's property tax must be abandoned as untenable.

(*l*) See 5 & 6 Vict. c. 35, ss. 63 (ix), 73; 16 & 17 Vict. c. 34, s. 35.

(*m*) (1861), 31 L. J. M. C. 54.

(*n*) (1858), E. B. & E. 1.

(*o*) (1846), 6 Q. B. 179, at p. 205: *vide supra*, p. 256.

(*p*) (1851), 14 Q. B. 587, at pp. 601, 606, 611: *vide supra*, p. 256.

because the point was not raised in the special case ; and it is submitted that a decision under such circumstances, almost without argument, is not of sufficient authority to overrule the express decision in *R. v. Southampton Dock Co.*

No deduction for services of the incumbent, or for salary of curates.—A deduction from tithes or tithe rentcharge, in respect of the value of the incumbent's personal services, has never been allowed. The claim was made and disallowed in *R. v. Joddrell (q)*, and in the *Hackney Tithe Case (R. v. Goodchild) (r)*. In the last-mentioned case, COLERIDGE, J., said (*s*) : "The relation [between the pastoral duty and the endowment of the benefice] is not a relation of the same kind as that between the farmer's labour and the productiveness of his farm : there is nothing in it like cause and effect. . . . The personal labours of the incumbent are not a charge on the tithes, but on his personal conscience ; and in a matter of poor rate are simply out of the question."

A deduction was at one time allowed for the salary paid to a curate, but cannot now be claimed. In the *Hackney Tithe Case (t)*, it was held that a deduction for the salary of a curate, who was to act as the substitute of the incumbent, was not permissible, but might be made where the services of a curate were required in addition to those of the incumbent (*u*). But in *Wheeler v. Burmington (y)*, the court refused to extend the principle to the following circumstances : the lay impropiators of the tithes of the parish of Burmington granted a lease of the tithes at a nominal rent to the vicar of Wolford, he covenanting to serve the cure of Burmington either by himself or a curate. The court held that in rating the tithes in the parish of Burmington, a deduction for the salary of the curate could not be allowed ; and some doubt was thrown on the *Hackney Tithe Case*. BLACKBURN, J., said : "The vicar of Wolford has become lessee of the tithes, and he pays rent in services instead of in money. If he paid in money he could not deduct the amount." It was also held in *R. v. Groves (z)* that in rating the lessee of tithe rentcharge, charged with the payment of 40*l.* a year to the perpetual curate of another parish, no deduction should be made for such payment. As was pointed out during the argument, the case was like that of an estate the rent of which was divided between two persons. Similarly, in *Lawrence v. Tolleshunt Knights (a)*, where the rector of a parish had voluntarily

(*q*) (1830), 1 B. & Ad. 403.

(*r*) (1858), E. B. & E. 1.

(*u*) This decision was followed in *Williams v. Langeinwen* (1861), 31 L. J. M. C. 54 ; see also *Overseers of Scriven-with-Tentergate v. Fawcett* (1863), 32 L. J. M. C. 161.

(*y*) (1861), 31 L. J. M. C. 57.

(*a*) (1862), 31 L. J. M. C. 148.

(*s*) E. B. & E., at pp. 51, 52.

(*t*) *R. v. Goodchild* (1858), E. B. & E. 1.

(*z*) (1860), 29 L. J. M. C. 179.

charged his tithe rentcharge with the perpetual payment of an annual sum towards the stipend of the incumbent of a new district, it was held that in rating the rector no deduction could be made in respect of the sum so deducted from the rentcharge. This decision was complementary to the decision in *Frend v. Tolleshunt Knights (b)*, in which it was held on the same facts that the incumbent receiving the payment made by the rector was not rateable. Obviously, if the rector had been allowed a deduction, part of the tithe rentcharge would have escaped from being rated. No doubt this happened in every case where a deduction was allowed from tithe rentcharge in respect of a curate's salary. Consequently this anomaly resulted: If a new ecclesiastical district was created, and towards the support of the incumbent an annual payment was made out of the tithe rentcharge of one or more parishes, no diminution of the rateable value of the tithe rentcharge took place. If, however, no new district was created, but a new church was built, and the curate at that church was employed by the rector of the parish, and paid out of the tithe rentcharge, the rateable value of that rentcharge was *pro tanto* diminished, according to the decision in the *Hackney Tithe Case (c)*.

Effect of the Mersey Docks Case.—It will be noticed that all the cases hitherto cited, allowing a deduction in respect of a curate's salary, were decided before 1865. In that year *Jones v. Mersey Docks (d)* was decided by the House of Lords, establishing the principle that where a person is in the occupation of property yielding a profit, the occupier is rateable in respect of that profit, and it is quite immaterial whether it is all paid to him.

In *R. v. Sherford (e)*, the next case which arose as to the rating of tithe rentcharge, and in which a deduction for a curate's salary was claimed, it was held that this principle applied. MELLOR, J., when giving the judgment of the court, said (*f*):

“ We think the only ground upon which the *Hackney Tithe Case (g)* could be supported was that the incumbent was forced to employ a curate to assist him, for which assistance he had to pay out of the subject-matter in respect of which he was rated, and so the occupation by him of the rentcharge was rendered *pro tanto* less beneficial.

That ground is really overruled by the late decision in the House of Lords (*h*). . . . If the income of the incumbent, instead of being a rentcharge, were derived from tithes actually let, such tithes would now be

(b) (1859), 1 E. & E. 753: *vide supra*, p. 436.

(c) (1858), E. B. & E. 1.

(d) (1865), 11 H. L. Cas. 443: *vide supra*, pp. 132—134.

(e) (1867), L. R. 2 Q. B. 503.

(f) (1867), L. R. 2 Q. B. 503, at p. 519.

(g) (1858), E. B. & E. 1. The judge is of course here referring only to the decision in the *Hackney Tithe Case*, that no deduction could be allowed for a curate's salary. The decision in that case on other points is not overruled in *R. v. Sherford*.

(h) *Jones v. Mersey Docks* (1865), 11 H. L. Cas. 443.

rateable in the hands of the tenant, subject only to such deductions, if any, as were necessary to maintain the property in such a state as to command such rent; that is, the rent which the hypothetical tenant would have given in order to be allowed to take the tithes. If the income were derived from the occupation of glebe, it would have been rateable at such rent as the hypothetical tenant would have given after making such deductions as would be necessary to maintain the property in a state to command such rent. In neither case could the consideration of the stipends payable to the curates have entered into the deductions to be made (*i*), according to the rule established by the House of Lords. . . . The subject-matter of the occupation which is rated is the amount of the tithe rentcharge. That amount is not made more or less by the services of the vicar or the curates. The hypothetical tenant would give the same price for the occupation of the rentcharge, whether the services in the several parishes were performed by the vicar or the curates, or were left wholly unperformed. So in the case of an income from glebe, or from tithes, the occupation value of either would in no case depend upon whether the services were performed by the incumbent, or by a curate, or were not performed.

"The fallacy of the argument on behalf of the appellant [the vicar] consists in confounding the rateable value to the poor rate with the remunerative value to the incumbent."

No deduction for repairs of chancel.—It is believed that it was the practice for many years to allow a deduction from tithe rentcharge in respect of the liability (where it existed) to repair the chancel of the church (*k*). But in *Dean and Chapter of St. Asaph v. Llanrhaidr-Yn-Mochnant* (*l*), it was held by the Court of Appeal (affirming the decision of the Queen's Bench Division) that no deduction could be allowed under this head. The Queen's Bench Division so held on the ground that it was contrary to the general principles of rating to look at what was done with profits after their receipt; and the Court of Appeal held that the hypothetical tenant had nothing to do with the repairs of the chancel, and would be under no obligation to do the repairs.

Whether any deduction can be claimed for tenant's profits.—The effect of the cases is that the question whether any deduction can be allowed for tenant's profits, is a question of fact; and the overseers (or the quarter sessions on appeal) are not bound as a matter of law to allow a deduction under this head, if sufficient

(*i*) In *Overseers of Scriven-with-Tentergate v. Fawcett* (1863), 32 L. J. M. C. 161, it had been held that the deduction for a curate's salary should be made from the whole of the vicar's income, including glebe, and this notwithstanding the fact that part of the glebe was in another parish. So that the case put by MELLOR, J., in *R. v. Sherford*, as an impossible contention had actually been held to be the law.

(*k*) See the argument for the appellants in the *St. Asaph Case*, cited below. See also the evidence given before the House of Lords' Committee on "Parochial Assessments" (1850): answers 12, 2312, 2469; but see also answer 1577. From the answer first cited, it appears that the practice was so well established that in a government bill introduced (in 1850) to define the then existing practice, a deduction for the repairs and insurance of the chancel (where charged on the tithes) was expressly authorised.

(*l*) [1897] 1 Q. B. 511; Ryde & Konstam's Rat. App. (1894—1904), 163.

has been allowed for the remuneration of the collector to induce the hypothetical tenant to take the rentcharge. Where deductions have been made for all out of pocket expenses and all possible losses, and the net income left is so secure that the hypothetical tenant cannot get less, but may get more, it is plain that the hypothetical tenant would give a rent practically identical with the net income thus ascertained. As was said by ERLE, J., in the argument in the *Hackney Tithe Case* (m), "What would you let 1,000*l.* in the funds for? Would you make a deduction on account of the trouble of applying for the dividend at the bank?" The question whether the gross income of a tithe rentcharge has been so cut down by deductions as to leave a net income, the security of which is comparable with that of an income from money in the funds, is obviously a question of fact. In the *Hackney Tithe Case* (n), after pointing out that in the case of a farm, or a railway, the tenant would look to the profits he could make, and that such profits should be deducted, the judgment proceeds thus:

"In cases where the sum is fixed at a certain amount, no profits of the kind alluded to can be expected or exist: and we must look to what would be the real inducement to a tenant to take a demise of the rentcharge. Where the amount is certain to be paid, a moderate compensation for the trouble of getting in the money, with what would be the fair allowance to meet expenses and contingent losses, would be the inducement to a tenant to take. In such cases, where he made a profit by his labour as collector, that alone might be a sufficient inducement if he were guaranteed against bad debts and law expenses. It is difficult to see in such a case why a man might not take the tenancy on the same terms, or nearly so, as the collection.

"By the statute, the assessment ought to be at what the tenant might reasonably be expected to take for. And if the allowance for collection would not be enough in addition to the allowance against bad debts and law expenses the tithe owner would be entitled to the further deduction; but in a caselike the present, we should think that the sum necessary to induce a tenant to take, in addition to the allowance for expenses of collecting, for bad debts and for law expenses, would be, if not altogether an evanescent quantity, at most a very small sum."

Some doubt was supposed to have been thrown on this decision by the remark of BLACKBURN, J., in the course of the argument in *Mersey Docks v. Liverpool* (o), that in the case of a lease of tithes "no allowance would be made for tenant's profits, but a reasonable remuneration for the expense and trouble of collecting." In *Dean and Chapter of St. Asaph v. Llanrhaiaadr-Yn-Mochnant* (p) the Queen's Bench Division appear to have decided that *Mersey Docks v. Liverpool* showed that a deduction for tenant's profits

(m) (1858), E. B. & E. 1, at p. 57.

(n) (1858), E. B. & E. 1, at p. 61.

(o) (1873), L. R. 9 Q. B. 84, at p. 92.

(p) [1897] 1 Q. B. 511; Ryde & Konstam's Rat. App. (1894—1904), 163.

was inadmissible as a matter of law ; but the Court of Appeal disallowed the deduction, on the ground that the deduction was not warranted by the findings of fact in the case before them. LOPES, L.J., said :

“ Tithe rentcharge is to be assessed like all other property according to the amount at which it might reasonably be expected to let to a tenant from year to year, and beyond allowances for expenses of collection, law expenses, and bad debts, no allowance should be necessarily made, though I can imagine cases where the deduction in respect of tenant's profits might be made. That would only be in a case where it was proved and found as a fact by the sessions that the amount of the deduction in respect of remuneration to the collector, and in respect of other expenses, was insufficient, and that anything allowed in respect of tenant's profits was allowed in addition, because the deduction was insufficient. There is nothing of that kind in this case. The court here made certain proper deductions ; but they also held that a further deduction should be made for tenant's profits. In my opinion that is wrong. I think they mistook the effect of the authorities. The justices appear to have thought, that in addition to the remuneration of the collector, however sufficient that might be, they ought to further allow something in respect of tenant's profits ; and if so they were wrong. I am perfectly clear that they have not found as a fact that the amount allowed for collection was insufficient, and that something in addition should be allowed for tenant's profits on that ground. I think, therefore, that the deduction that is asked for in respect of tenant's profits should not have been allowed.”

Tithes impropriate and payments in lieu thereof.—Tithes impropriate are specially included in the statute, 43 Eliz. c. 2, among the classes of rateable property ; there can therefore be no doubt of their being rateable. But in some cases payments, resembling tithes, which are in the hands of lay impropriators, and have been loosely called “ tithes,” have yet been held not rateable, because they were originally not strictly “ tithes.” As in the case of the tithes payable to the parson or vicar (*q*), if under a special Act payments are substituted for “ tithes impropriate,” the substituted payments are themselves rateable, unless specially exempt, in the same way as the “ tithes impropriate ” were originally rateable ; but the rateability of the substituted payments depends upon the question whether the payments for which they were substituted were, strictly speaking, “ tithes impropriate ” ; for if they were not, they were not rateable within the statute 43 Eliz. c. 2, and therefore the substituted payments are also not rateable, unless they are made rateable by the Act creating them. This appears from *Esdaile v. City of London Union* (*r*), in which it was held that

(*q*) *Vide supra*, p. 432.

(*r*) (1887), 19 Q. B. D. 431 (affirming 18 Q. B. D. 599) ; Ryde's Rat. App. (1886.—1890), 105. The early history of the payments is set out in the latter report.

certain ancient payments made in the city of London were not strictly "tithes impropriate," and therefore that neither those payments nor modern payments substituted for them were rateable. The facts were as follows: In the city of London by immemorial custom every householder made certain payments to the clergy on Sundays and certain saints' days. The amount of these payments being disputed, an Act was passed, 37 Hen. 8, c. 12, and a decree was made by commissioners appointed under the Act ordering that "the citizens and inhabitants of the city of London and liberties of the same for the time being shall yearly without fraud or covin for ever pay their tithes (s) to the parsons, vicars and curates of the said city and their successors for the time being after the rate following:" [then followed a scale of payments in proportion to the rent of the house occupied at $16\frac{1}{2}d.$ for every 10s. of rent]. The remedy in case of non-payment was not distress, but imprisonment of the defaulter. The payments under this decree became subsequently vested in the appellants as lay impropiators, and by a special Act passed in 1881, "all tithes and sums of money in lieu of tithes whatsoever arising or growing due in the parish" (except upon certain railway stations) were extinguished, and the tithe-owner was to receive "in lieu and satisfaction of the tithes and sums of money in lieu of tithes so ceasing and extinguished, and to which he would have been entitled if the Act had not been passed, the annual sum of 6,500*l.*" to be collected by the overseers by means of a rate to be levied like the poor rate. The Act contained no clause expressly declaring the sum of 6,500*l.* to be either liable to, or free from rates and taxes. It contained a proviso that the payment of 6,500*l.* might be redeemed by a sum sufficient (if invested in consols) to produce an income of 6,500*l.*, and it was admitted that neither the sum of 6,500*l.* nor the so-called "tithes" for which it was substituted had ever in fact been rated (*t*). It was held that the payments made under the Act of Henry 8 were not "tithes" within 43 Eliz. c. 2, and that the payment substituted for them was not rateable, for the following reasons: that the fact that no attempt had been made for nearly 300 years to rate the payments suggested that they were not rateable; that the Act of 1881 did not intend that the annual payment of 6,500*l.* should be rated, because it enabled the rate-payers to substitute an income of the same amount from consols, which would clearly not be rateable: that the fact that the Act,

(s) The payments were in this and all the subsequent Acts invariably described as "tithes."

(t) The evidence of usage was (it is submitted) admissible; for the question really was, what was the nature of the original payments for which the payments under the Act of Henry 8 were substituted? The custom would throw some light on this question, for if the original payments had been tithes, and therefore rateable, it was not likely that the payments under the Act of Henry 8 should be allowed to be exempt, there being nothing in the Act to create an exemption. See further as to when evidence of usage is admissible, *supra*, pp. 354, 355.

37 Hen. 8, c. 12, spoke of the payments under the Act as "tithes" did not make them tithes; that those payments were not tithes because they were not recoverable (as tithes were) by distress, but by a personal remedy (*u*): that they were charged on the rents of houses which at common law were not subject to tithes: and that if tithes (in the true sense) existed in the city of London, at the passing of 37 Hen. 8, c. 12 (which was not clear), that Act did not extinguish such tithes, and therefore the new payments under the Act were not rateable (*x*).

(*u*) Cf. *Edwards v. St. Olave's*, Ryde's Rat. App. (1891—1893), 293; *supra*, p. 434.

(*x*) See *R. v. Great Hambleton* (1834), 1 A. & E. 145; *R. v. Christopherson* (1885), 16 Q. B. D. 7; *supra*, pp. 432, 433.

CHAPTER XXIV.

PUBLIC-HOUSES.

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Preliminary.—There has been not a little conflict of judicial opinion in the cases decided with reference to the rating of public-houses ; nor can it be said that the principle on which, or the way in which, their rateable value must be determined is clearly established. Before going into details, it may be useful to state a summary of the decisions.

In valuing a licensed public-house, the existence of the license must be taken into account (*a*). Where the occupier of the premises is "tied" to a particular brewer (that is, is bound to purchase all his malt liquors of him), the existence of the "tie" must not be taken into account, and the rateable value must be measured by the rent which might be expected from a tenant who was free from the tie (*b*). It is not easy to determine how far it is permissible to give evidence of, and to take into account, the precise amount of trade which the particular person in occupation actually is doing, or the precise amount of the profits which such

(*a*) *R. v. Bradford* (1815), 4 M. & S. 317, *infra*, p. 452 ; *Cartwright v. Sculcoates Union*, [1899] 1 Q. B. 667 ; [1900] A. C. 150 ; Ryde & Konstam's Rat. App. (1894—1904), 167. *Cf. West Middlesex Waterworks v. Coleman* (1885), 14 Q. B. D. 529 ; *infra*, p. 453.

(*b*) *Overseers of Sunderland v. Sunderland Union* (1865), 34 L. J. M. C. 121, *infra*, p. 453 ; in effect overruling *Allison v. Monkwearmouth* (1854), 4 E. & B. 13, *infra*, p. 453 ; see also *London County Council v. City of London Brewery Co.* (1897), 14 T. L. R. 69 ; *Bradford-on-Avon Union v. White*, [1898] 2 Q. B. 630 ; *infra*, p. 464.

a person makes. It was at one time held that where the ordinary evidence of experts can be given to show what is the market value—the letting value—of similar public-houses in the same town (*c*), evidence of the actual occupier's takings, and of the trade which he does, is inadmissible (*d*): but that in exceptional cases, such as that of a licensed refreshment room at a railway station (*e*), or in the case of a public-house in exceptional circumstances, where it is not possible to compare other premises which are actually let, and have a recognised market value, then it is permissible to inquire into the trade which the actual occupier is doing (*f*), and to find out what money can be made out of the occupation. But the House of Lords appear to have held that these inquiries are permissible in most, if not in all cases (*g*).

The existence of the license must be taken into account.—Although this point is now well established (*h*), it may be useful to consider the reasons. It has been contended that the license to sell intoxicating liquors is a personal privilege granted to the occupier, and does not increase the value of the hereditament, though it may increase the trade profits which the licensee can make: and therefore that, as a matter of law, the existence of the license ought not to be taken into account. But there is no difficulty in determining the law when once the facts are understood.

A publican's license is not like a dog license, or a license to carry a gun: it does not confer a privilege on the holder of the license wherever he may choose to live, but it is a license to a particular person to carry on a specified trade at a particular place. If a yearly tenant holds a license, the practical effect of the licensing Acts, as administered by the justices, is that he cannot (without the consent of his landlord) transfer the privilege given by the license to other premises which are not licensed. The number of licensed houses in a given area is (in practice) more or less strictly limited; and consequently the owners of those houses know that a tenant who wishes to carry on the trade of a publican must take one of the houses already licensed. The landlords have

(*c*) As to the question whether the letting value of public-houses in another town could be given in evidence, see *Dodds v. South Shields*, [1895] 2 Q. B. 133, at p. 140, *per* RIGBY, L.J.; and *Cartwright v. Sealcoates Union*, [1899] 1 Q. B. 667, at p. 677; *Ryde & Konstam's Rat. App.* (1894—1904), 167, at p. 180: *per* A. L. SMITH, L.J.

(*d*) *Dodds v. South Shields*, [1895] 2 Q. B. 133; *infra*, p. 455. But the authority of this case is shaken by *Cartwright v. Sealcoates Union*, [1899] 1 Q. B. 667; [1900] A. C. 150; *Ryde & Konstam's Rat. App.* (1894—1904), 167; *infra*, p. 459.

(*e*) *Clark v. Fisherton Angar* (or *Aldbury Union*) (1880), 6 Q. B. D. 139; *supra*, p. 171. So, too, in the case of a racecourse, *R. v. Ferrall* (1875), 1 Q. B. D. 9; *supra*, p. 170.

(*f*) *Dodds v. South Shields*, *ubi supra*.

(*g*) *Cartwright v. Sealcoates Union*, [1899] 1 Q. B. 667; [1900] A. C. 150; *infra*, p. 459.

(*h*) See the cases cited in note (*a*), *supra*, p. 450.

not an absolute monopoly in law, because other houses may be licensed; the monopoly depends on the fact that an unlimited number of licenses are not (and are not likely to be) granted. If in a small town there were only one licensed public-house, the landlord could say to the tenant, "On these premises (and on these premises only) can you carry on the trade of a publican in this town." As long as the publican's trade is known to be more profitable than other trades, a tenant will be found willing to take the house; and in considering what rent the tenant can (and will) pay, both landlord and tenant will certainly take into account the fact that the tenant will make a large profit by his occupation (*i*). The tenant cannot, in the case supposed, go elsewhere, and therefore the landlord is the master of the situation, and can (and in practice does) get a higher rent for licensed premises than he gets for similar premises which are not licensed. If instead of a small town with one public-house we take the case of a larger town, with ten times the trade and ten public-houses, the problem is more complicated, but the nature of the problem is not altered. As long as the number of competitors anxious to become tenants is not less than the number of licensed public-houses, the landlords of those houses will always be able to get higher rents than can be obtained for similar premises which are unlicensed.

If it be established as a fact that higher rents are given for licensed than for unlicensed premises, it seems to follow as a matter of law that, in considering at what rent licensed premises may reasonably be expected to let (in order to answer the problem involved in the definition of "net annual value" in the Parochial Assessments Act, 1836), the existence of the license must be taken into account: for "all that could reasonably affect the mind of the intending tenant ought to be considered" (*k*).

The Canteen Case: R. v. Bradford.—The earliest case on the subject is *R. v. Bradford* (*l*), decided before the passing of the Parochial Assessments Act, 1836. In that case, Bradford was the tenant of a canteen in Hythe barracks, for which he paid 15*l.* as rent, and "also the further sum of 510*l.* for the privilege of using the same as a canteen, and selling therein provisions, liquors," etc. It was held that the two payments constituted "in substance but one entire rent payable for the occupation of a real

(*i*) See the judgment of Lord BRAMPTON in *Cartwright v. Sealcoates Union*, [1900] A. C. 150, at p. 161; Ryde & Konstam's Rat. App. (1894—1904), 167, at pp. 193, 194.

(*k*) See the judgment of Lord HALSBURY, L.C., in *Cartwright v. Sealcoates Union*, [1899] 1 Q. B. 667, at p. 673; Ryde & Konstam's Rat. App. (1894—1904), 167, at p. 175: see also pp. 165—167, *supra*. The question whether any part, and, if so, how much, of that which a tenant pays under the name of "rent" is paid, not for the hereditament itself, but for the "goodwill" of a trade, is further considered *infra*, pp. 467—471.

(*l*) (1815), 4 M. & S. 317.

tenement, and for the enjoyment of the advantages belonging to it" (*m*). Lord ELLENBOROUGH, C.J., compared the canteen to the case of a "soke-mill" at which all the inhabitants of the neighbourhood were bound to grind their corn : such a mill would let at a higher rent, and would therefore have a higher rateable value.

It may be useful to note in passing the distinction between a "soke-mill" and a brewery, the owner of which has bound the tenants of public-houses belonging to him to buy their beer of him. In the former case the obligation rests upon custom, in the latter it rests upon contract. The custom binds all the occupiers (whoever they may be) of certain houses : the contract with the tenant of a tied house is voluntarily entered into, and may be terminated by agreement at any moment. Again, the brewer may sell, or pull down, his brewery, and still retain the benefit of his covenant with the tenants of tied houses, and may carry his trade to another brewery in another parish ; but the owner of a soke-mill cannot carry away the benefit of the right attaching to his mill. If by statute the tenants of all public-houses in a particular district were bound to buy their beer at a particular brewery, the position of that brewery would be analogous to that of the soke-mill.

In *West Middlesex Waterworks v. Coleman* (*n*) it was held that in ascertaining the annual value of a public-house for the purposes of water rate, the existence of the license must be taken into account ; in that case it was conceded that it must be taken into account in valuing for the purposes of poor rate.

Tied houses.—It was at one time held (*o*) that in valuing a brewery to which public-houses were tied, the additional value given to the brewery by the existence of the tie must be taken into account as part of the rateable value : and the necessary corollary of this decision is that the diminution in the value of the public-houses, owing to the tenant being "tied" to buy beer of his landlord, must be taken into account in valuing the public-houses. But this decision was in effect overruled in *Overseers of Sunderland v. Sunderland Union* (*p*), in which the majority of the court held that in valuing tied public-houses and the breweries to which they were tied, nothing must be added to the value of the breweries, or deducted from the value of the public-houses, in consequence of the tie. This decision is supported by *Bradford-*

(*m*) A reference to the statutes cited in the argument shows that under the statutes then in force a license to keep an ale-house applied to a particular place only.

(*n*) (1885), 14 Q. B. D. 529. The case also decided that the payment of a premium for a lease must be taken into account.

(*o*) *Allison v. Monkwearmouth Shore* (1854), 4 E. & B. 13.

(*p*) (1865), 34 L. J. M. C. 121. ERLE, C.J., who dissented from the view of the majority of the court in the *Monkwearmouth Case*, formed one of the majority who decided the *Sunderland Case*.

on-Aron Union v. White (q), and by *London County Council v. City of London Brewery Co.* (r), and (it is believed) is now invariably acted upon in practice. In the *Sunderland Case* the court assumed that the publican's profits were cut down by reason of the tie, because he had to pay more for his beer than he would have to pay if he traded in a free house, and that the publican paid less rent in consequence; but it was held that this did not affect the rateable value. It was said by MONTAGUE SMITH, J. (s): "The publicans are really paying part of their rent in the extra price they are charged for the beer, and clearly the shape in which they pay cannot alter the rateable value."

The effect of the decision may perhaps be put thus: the definition of "rateable value" in the Parochial Assessments Act, 1836, takes as the measure of value the rent which an ordinary yearly tenant would give, if he had nothing more or less than those rights and liabilities which the law attaches to a yearly tenancy: consequently it cannot be right, in the case of a tied public-house, to take as the measure of value the rent given by a tenant under unusual and onerous covenants, which the law would not attach to an agreement for a yearly tenancy. In reality a tied public-house is worth as much to the tenant as is a free house, although the tenant of a free house will give a higher rent: the so-called "rent" in the case of a tied house does not represent the whole of the value to the tenant, and the real rent (as pointed out by SMITH, J.) is partly paid in the extra price paid by the tenant for beer. So, too, for the purposes of inhabited house duty, it has been held that the rent paid by a tied tenant does not represent the real rent which the house is worth, but only part of that rent (t). In *Arnold Perrett & Co. v. Rudford* (u) it was held that the sale of beer to a tied tenant at prices higher than those charged to free tenants was no breach of a covenant by the landlord to sell at "the fair current market price," and WRIGHT, J., seemed to consider it a fact well recognised by those engaged in the trade that the tenants of free houses obtain better terms than tied tenants.

The difficulties met with in valuing tied public-houses will be further considered hereafter (x).

In what cases evidence of profits is admissible.—In ascertaining the annual value of a public-house, considerable difficulties are met with. If the public-house is actually let on an ordinary yearly tenancy, under an agreement of recent date, entered into in the ordinary circumstances which regulate "the higgling of the market," there is no doubt that the rent actually paid is (*prima*

(q) [1898] 2 Q. B. 630; *infra*, p. 464.

(r) (1897), 14 T. L. R. 69.

(t) *Walker v. Brisley, Grinter v. Fleming*, [1900] 2 Q. B. 735, at p. 747.

(u) (1901), 17 T. L. R. 201.

(s) 34 L. J. M. C., at p. 136.

(x) *Vide infra*, p. 458.

facie at least) the best possible evidence of value. And the Court of Appeal has held that if the public-house to be valued has not been so let, and if there are other public-houses (so let) with which a comparison can be made, and evidence "which can be relied on" can be given by experts as to the letting value of other public-houses similarly situated, similarly built, and of the same size, then the ordinary rule applies and evidence of takings or profits cannot be given (*y*). In exceptional cases (*z*) profits may be looked at; but not otherwise. But there is great difficulty in applying this rule: for it assumes the existence of conditions, the existence or non-existence of which can perhaps only be proved by breaking the rule and looking at the profits. In dealing with one public-house, a valuer may say (quite honestly), "In my opinion it may fairly be compared with other houses named; it is similarly situated; and it is not an exceptional case." One of the considerations—perhaps the most important—on which this opinion is based is the estimate which the valuer makes of the number of chance customers which the ordinary traffic of the streets will bring to the house. But suppose the estimate is wrong: suppose the valuer estimates the weekly takings at 25*l.*, and the other side are able to show that in fact the actual takings amount to as little as 10*l.*, or as much as 50*l.*, the evidence is apparently admissible, because it will tend to show that the public-house in question cannot fairly be compared with others, and that it is not similarly situated. But if so, the general rule laid down in *Dodds v. South Shields* (*a*) becomes unworkable: for in order to see whether the case is governed by the rule there laid down (that actual takings cannot be inquired into), it is necessary to do the very thing which the rule forbids.

A later decision of the Court of Appeal, affirmed in the House of Lords, *Cartwright v. Sculcoates Union* (*b*), has thrown very great doubt on the correctness of the decision in *Dodds v. South Shields*: and as there is some difficulty in saying how far the two cases are consistent, it will be best to summarise the facts and the judgments in each case.

The case of *Dodds v. South Shields*.—In *Dodds v. South Shields* (*c*), the appellant was the tenant of a public-house (*d*) in South Shields rated at 416*l.* 10*s.* At the sessions the respondents

(*y*) See *Dodds v. South Shields*, [1895] 2 Q. B. 133, at pp. 137, 138.

(*z*) As in the case of a racecourse, *R. v. Verrall* (1875), 1 Q. B. D. 9, *supra*, p. 170; or in the case of a refreshment room at a railway station, *Clark v. Alderbury Union* (1880), 6 Q. B. D. 139, *supra*, p. 171.

(*a*) [1895] 2 Q. B. 133.

(*b*) [1899] 1 Q. B. 667; [1900] A. C. 150; Ryde & Konstam's Rat. App. (1894—1904), 167.

(*c*) [1895] 2 Q. B. 133.

(*d*) The writer has been informed by one of the counsel engaged in the case that the public-house was not tied; but the fact is not stated in the law reports.

sought, by cross-examination and examination-in-chief, to show the amount of the appellant's average weekly takings. The evidence was objected to and rejected, and this ruling was affirmed by the Queen's Bench Division and by the Court of Appeal. Lord Esher, M.R., said (e) :

"In dealing with inhabited houses, or ordinary business premises [*i.e.*, not licensed premises], the mode of determining the question is by inquiring what rent is given for similar premises in similar positions in the same place. That is the general rule, though the amount of profit that a man is making, or the amount of his gross profits in his business, would be questions which might be not immaterial if the inquiry were what could a tenant afford to give ; but where the inquiry is what a tenant is likely to give, the question either of his gross earnings or of his profits is, and must be, wholly immaterial (*f*) : and it is in fact mischievous and oppressive. So that such evidence, where you can get the ordinary evidence, ought to be rejected, not only on the ground that it is immaterial, but also on the ground that to allow it would be oppressive and unfair (*g*).

"That principle is admitted in ordinary cases, but it is said there are exceptional cases, in which it is necessary to go into takings." [After instancing docks (*h*), a racecourse (*i*), and a refreshment room at a railway station (*k*), the MASTER OF THE ROLLS continued :] "What is there exceptional in the case of a public-house in a large town ? There may be some public-house or some hotel in exceptional circumstances, because I am not going to say there is not ; but the question we are asked is with regard to a public-house in a town where there are many other public-houses. If people accustomed to South Shields can give evidence which can be relied on (*l*) as to what is the rent in the house market of public-houses similarly situated, similarly built, and of the same size, it seems to me that the ordinary rule can be applied, although the houses are licensed. Then it is said that some of the public-houses in South Shields are tied public-houses. Here again, if there is one tied public-house there are many ; and what difficulty can arise in the case of tied public-houses any more than when the houses are free, I cannot see (*m*). I think therefore the same rule applies whether they are tied houses or not."

And A. L. SMITH, L.J., said (*n*) :

"Where there is a tenement—whether it has a license or not seems to me to be immaterial—and it is desired to ascertain the rateable value of that tenement, and there are other similar tenements, I do not say like tene-

(e) [1895] 2 Q. B., at pp. 135—137.

(f) The learned judge seems not to have been aware that, in actual practice, in considering what a tenant is likely to give, the gross earnings (as shown by the books) are in most cases regarded as most material.

(g) *Vide infra*, pp. 457, 460, 461.

(h) *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84 ; *supra*, p. 168.

(i) *R. v. Verrall* (1875), 1 Q. B. D. 9 ; *supra*, p. 170.

(k) *Clark v. Alderbury Union and Fisherton Angar* (1880), 6 Q. B. D. 139 ; *supra*, p. 171.

(l) This passage seems to be open to the objection that evidence, which *prima facie* can be relied on, might be shown to be worthless if the takings were given in evidence ; in which case it would be necessary to give that evidence in order to see whether the evidence was admissible.

(m) *Vide infra*, p. 458.

(n) [1895] 2 Q. B., at p. 138.

ments, but similar tenements, with which a comparison may be made, general evidence of experts as to the market value of the house is legitimate evidence. . . . The position of the house, that it is in a front street, that it is a corner house, or that it is in any other good position, are matters to be taken into consideration ; and the rent which a tenant from year to year would give for the premises is to be proved by calling experts who know the town and have had dealings in the letting of public-houses, whether tied or free, and from their knowledge and experience can say that with regard to the public-house which is the subject-matter of the inquiry, the rent which a tenant would give from year to year is such an amount. It is *nilhil ad rem* in such a case whether the tenant has made 1,000*l.* a year in the house, or whether he has lost 1,000*l.* a year in the house. Take the case where a tenant has neglected his business, or has not been otherwise successful, and he has lost 1,000*l.* and is out of pocket. Is that house to be rated at nothing ? ”

Remarks on Dodds v. South Shields.—It is extremely difficult to say how far the decision in *Dodds v. South Shields* (*o*) has been shaken by the later decision of the Court of Appeal and the House of Lords in *Cartwright v. Sculcoates* (*p*). The latter case was held by the Court of Appeal to be distinguishable on the facts, but in the House of Lords it was suggested that if *Dodds v. South Shields* did more than lay down a convenient rule of practice, and laid down a general principle as to the admissibility of evidence, it was wrong (*q*).

It must not be forgotten that the rule laid down in *Dodds v. South Shields*, if it is to be acted upon, cuts both ways. In that case the rule was laid down to protect the publican, but it may be equally well used against him ; and, when it is so used, the rule produces what appears to be a hardship. Suppose a new railway station is opened or a street improvement takes place, whereby traffic *may* be diverted from the public-house in question. The valuers for the overseers may say, “ In our opinion the position of the public-house is as good as ever it was ” : that evidence is clearly admissible. But suppose the occupier says, “ I have been occupier for ten years, nine of which were before the alterations : in those nine years I made 1,000*l.* a year, in the tenth I made only 500*l.* There has been no change in the management of the business, and the diversion of traffic has taken away all my chance customers.” Is not evidence of this falling off in profits admissible even to test the correctness of the opinion of the overseers’ valuers ? In such circumstances, is it “ *nilhil ad rem* ” to show that a tenant who had formerly made 1,000*l.* a year now makes only 500*l.* ?

(*o*) [1895] 2 Q. B. 133.

(*p*) [1899] 1 Q. B. 667 ; [1900] A. C. 150 ; Ryde & Konstam’s Rat. App. (1894—1904), 167.

(*q*) See the judgments of Lord MORRIS and Lord DAVEY, [1900] A. C., at pp. 155, 157, *infra*, p. 461. See also the judgment of COLLINS, L.J., in the Court of Appeal, [1899] 1 Q. B., at p. 679, *infra*, p. 460.

It is submitted that the passage quoted above from the judgment of A. L. SMITH, L.J., cannot have been intended to be of universal application, or that (if so intended) it involves a confusion between the admissibility and the value of evidence of takings. If a public-house be rated at 500*l.* a year, it must (it is submitted) be admissible to give evidence on behalf of the tenant that his gross annual takings are only 500*l.* The value of the evidence may be *nil*, because it may be shown that the tenant was incompetent. But evidence which may be shown to be worthless does not thereby become inadmissible. And if the evidence of takings in the case supposed be supplemented by proof that the tenant had considerable experience and was a man of ordinary skill and care, the fact that *his* gross annual takings were only 500*l.* would (it is submitted) be evidence tending to show that the rateable value was something less than 500*l.*

On the other hand, it must not be forgotten that the profits of a public-house, though they may be evidence, are not necessarily the measure of rateable value. The profits made in one house may be double those made in another, though the rateable value may be the same : for the difference *may* be due to the greater skill or experience possessed by the tenant of one house : and a tenant will not give a higher rent merely because he has more skill than all other tenants in managing the business to be carried on in the house.

The difficulty in valuing tied public-houses.—In *Dodds v. South Shields* (*r*), Lord ESHER, M.R., said : “ If there is one tied public-house, there are many ; and what difficulty can arise in the case of tied public-houses any more than when the houses are free, I cannot see.” As the question whether it is difficult to ascertain the true rateable value of a tied public-house is possibly a question of fact rather than of law, it is perhaps permissible to criticize this part of the judgment. Lord ESHER’s reasoning appears to be as follows : “ A house not let under an ordinary yearly tenancy may be compared with other houses which are so let, and the annual value may thus be estimated : shops may be compared with shops, free public-houses with other free public-houses, tied public-houses with tied public-houses.” But Lord ESHER seems to have overlooked the fact that the difference between a free and a tied public-house is not like the difference between a butcher’s and a baker’s shop. In nearly every town it would probably be possible to find shops of both kinds let under an ordinary yearly tenancy, and so by multiplying instances an estimate (more or less accurate) may be made. But a tied public-house is *ex hypothesi* not let under an ordinary yearly tenancy : the so-called “ rent ” is not the

true rent, but only a part of the rent which an ordinary yearly tenant would give; and the so-called "rent" differs from the true rent by some unknown amount which need not necessarily bear any fixed proportion to the so-called "rent." If there are free public-houses let under an ordinary yearly tenancy, the multiplication of instances of such houses may enable a valuer to estimate the value of a tied public-house: but the multiplication of instances of tied public-houses will not assist him, because the same unknown factor, representing the difference between the so-called "rent" and the true rent, appears in every instance. If all the houses in a town were let under long leases at low ground rents, to ascertain the ground rents would not enable a valuer to fix the rateable value. He would know, of course, that the rateable value would in every case be greater than the ground rent, but he would not be enabled to say how much greater it was.

The Case of Cartwright v. Sculcoates Union.—In *Cartwright v. Sculcoates Union* (s), the appellant was the occupier of a tied public-house in Hull, and the arbitrator to whom the appeal was referred rejected evidence tendered by the respondents as to the appellant's takings, but found the following facts: That the premises occupied a better position than any other public-house in the neighbourhood; that nearly all the public-houses in Hull were tied houses: that the public-houses which were not tied were of so little value, and so far from the appellant's premises, that the rent paid for such public-houses furnished no accurate criterion of the rent which a tenant might reasonably be expected to pay for the appellant's premises: that any person desiring to become a tenant of the appellant's premises would endeavour to ascertain the trade actually done thereon, by reference to the takings, or otherwise: that although it was clear that the appellant's premises occupied a better position than any other public-house in the neighbourhood, it was not possible to ascertain, with any approximation to accuracy, how much better the position of the appellant's premises was, and how much more rent a tenant might reasonably be expected to pay for them, without ascertaining the trade actually done.

The Court of Appeal (whose decision was affirmed by the House of Lords) held that, on these findings, the case was one to which the rule in *Dodds v. South Shields* (t) did not apply, and as some (if not all) of the facts above stated would probably be true of many public-houses, the application of the rule in *Dodds' Case* appears to be considerably curtailed. But the Court of Appeal

(s) [1899] 1 Q. B. 667; [1900] A. C. 150; Ryde & Konstam's Rat. App. (1894—1904), 167.

(t) [1895] 2 Q. B. 133; *supra*, p. 455.

went somewhat further and laid down some general propositions which cannot be easily reconciled with the judgments in *Dodds v. South Shields*, and still greater doubt was thrown upon that case in the House of Lords. Thus, in *Cartwright v. Sculcoates Union (u)*, Lord HALSBURY, L.C. (sitting in the Court of Appeal), said that, "all that could reasonably affect the mind of the intending tenant ought to be considered"; that judgments on a case stated by quarter sessions are not intended to lay down abstract propositions on the law of evidence, but as advice to the sessions as to the mode in which such and such a fact is to be ascertained, and that "a roving commission over a man's books, in the nature of an income tax commissioner's, to find out what he is making" would be inexpedient, mischievous, and oppressive; and then continued (*x*):

"I am not aware that, as one test in ascertaining whether a house is capable of doing a good business or not, it would be inappropriate, whether it is a public-house or a shop of any other kind, that somebody or another should be called as a witness to say, 'I saw every day the house quite full of customers.' There is no decision which to my mind justifies the proposition that that would not be legitimate evidence. It would be to my mind one of the most extraordinary things in the world if you could give expert evidence that such and such a house would be likely to command such and such a business, and yet not be able to verify that *a priori* opinion by proof of the fact that it did command such a business. That is a totally different proposition from saying that you could go into a question of profit and loss, and ascertain whether a man has made so much money by conducting the business in the house. So here, whether the evidence tendered is that a great number of persons brought drays of beer from time to time to this house; or that a great number of people were in the house drinking—both these topics of inquiry seem to me to point to the same thing, that it was a good house for business. It is not ascertaining the exact quantity of business done, but whether it is a good house for business, and as you want to know whether such and such a rent is appropriate it is legitimate evidence to ascertain whether it is a good house for business or not."

And COLLINS, L.J., said (*y*):

"To say that as a matter of law, one is to shut one's eyes to that which must be a factor, if not the dominant factor, in governing the decision of any would-be tenant, namely, what possibility there is of making profits out of the hereditament, would be to shut one's eyes to the purpose for which evidence is admissible. It seems to me in this case, when you exclude altogether the profits actually made, but admit evidence as to the special facilities incident to this particular hereditament, that you are simply seeking to get at the most obvious and important factor in determining the intention of the tenant, whether he would or would not give a certain rent for those premises. The facilities incident to the hereditament itself are absolutely germane to the matter. One way of arriving at these facilities—probably

(u) [1899] 1 Q. B. 667, at pp. 673, 674; Ryde & Konstam's Rat. App. (1894—1904), 167, at pp. 175, 176.

(x) [1899] 1 Q. B., at p. 674; Ryde & Konstam's Rat. App. (1894—1904), at p. 176.

(y) [1899] 1 Q. B., at p. 679; Ryde & Konstam's Rat. App. (1894—1904), at p. 182.

the best way—is to inquire how far they have been efficacious in the past. What inference are we to draw from what we know, as to what business can be done on those premises by an ordinary tenant? Surely the business that has been done is the most important factor in arriving at a conclusion. Of course it has to be qualified by any special circumstances.”

The House of Lords approved this decision, holding that it was right to take into account the amount of business which the public-house was doing, but that “any inquiry into profits should be avoided, if possible, because it would be oppressive” (z); the judgments, however, do not very clearly define what is to be the test in determining whether it is “possible” to avoid an inquiry into profits, and when it would be “oppressive” to make the inquiry. Lord MORRIS said (a):

“The arbitrator asked himself almost the very first question that the hypothetical tenant would ask, namely, is this a house doing a good business or a bad business? . . . It is true that the best way of ascertaining what the trade was which was going on, would be the production of the books of the then tenant; but that was objected to. It is suggested that the case of *Dodds v. South Shields Union* (b) decided that that is improper evidence. If it so decided, I can only say that I entirely disagree with it, and . . . if it goes that length, I am entirely of an opposite opinion. It is said that this would be an inquisitorial inquiry, a mischievous one, and several other adjectives are applied to it. I do not see how it is inquisitorial if the parties themselves are ready to bring the evidence forward (c). There is no force put on a publican to produce his books; he is not in this inquisition threatened with the screw, and if he chooses not to bring forward his books he need not do so, and the arbitrator is then obliged to forage about for the purpose of ascertaining in the best way he can under the circumstances what the profits would be. As I have said, that question, in my opinion, is one of the most important factors in arriving at a conclusion as to what a sensible man would pay as rent for the premises.”

And Lord DAVEY said (d):

“I do not understand *Dodds’ Case* to have laid down any rule of the law of evidence. In my opinion, the learned judges merely intended to sanction the practice which had obtained in dealing with these cases of rating, and if I thought that they had intended to lay it down that evidence which would be admissible in what are called exceptional cases would not be admissible in point of law in another case, all I can say is, I should hesitate very long before I accepted *Dodds’ Case* as correctly laying down the law. . . . It appears to me that all that *Dodds’ Case* purported to do was to lay down a very convenient rule of practice. . . . I repudiate this distinction, which has been made so much of, between exceptional and ordinary cases.

(z) *Per* Lord MACNAGHTEN, [1900] A. C., at p. 153.

(a) [1900] A. C., at p. 155; Ryde & Konstam’s Rat. App. (1894—1904), at pp. 187, 188.

(b) [1895] 2 Q. B. 133; *supra*, p. 455.

(c) Lord MORRIS apparently did not notice that in *Dodds v. South Shields*, *supra*, the question raised was whether the publican could be compelled to produce his books, and the court held that he could not.

(d) [1900] A. C., at pp. 157, 159; Ryde & Konstam’s Rat. App. (1894—1904), 189—191.

You have in each case to find out in the best way you can what is the rent which a tenant may reasonably be expected to give, and if the best way under the particular circumstances is to ascertain the use which a tenant might expect to be able to make of the premises, the facility afforded by the premises for the carrying on of a trade appears to me to be a primary and elementary consideration in the case. If you are to take into account the fact that the premises command a trade, you must surely ask, what trade? Is it a large trade or is it a small trade? And I do not know myself any better test of what trade they may be expected to command than the trade which they actually do command. It is not that you rate the profits, it is not that you rate the man's skill and judgment or discretion in the mode of carrying on the business, but you have to ascertain what sort of a trade the hypothetical tenant, as he is called, may reasonably expect to be able to carry on on those premises, as an element in determining the rent he would be willing to offer."

And Lord BRAMPTON said (*e*) :

"Although the profits in this house cannot themselves be assessed according to their value as profits, yet the power to earn them in that house increases the value of that house."

Remarks on Cartwright v. Sculcoates Union.—It is extremely difficult to say how far *Dodds v. South Shields* (*f*) is consistent with *Cartwright v. Sculcoates Union* (*g*). All the judges who decided the latter case in the Court of Appeal (including A. L. SMITH, L.J., who was a party to both decisions) treat the two cases as consistent with each other, though Lord HALSBURY and COLLINS, L.J., use language wide enough to contradict the rules laid down in the earlier case. If, as was said by Lord HALSBURY (*h*), "all that could reasonably affect the mind of the intending tenant ought to be considered," and if, as was said by COLLINS, L.J. (*i*), "the business that has been done" is an important factor to be considered (subject to qualification by special circumstances), it seems impossible to treat *Dodds v. South Shields* as correctly laying down the general principle, that evidence of the business done by the actual occupier is inadmissible. Nor is the result arrived at in that particular case easily reconciled with the passages just quoted: since the evidence of the occupier's average weekly takings (which was rejected) could reasonably affect the mind of an intending tenant, and that evidence was rejected although (so far as appears from the case) there were no special circumstances to qualify it.

Again, in the House of Lords, Lord DAVEY, while approving *Dodds v. South Shields* (*k*) as laying down "a very convenient

(*e*) [1900] A. C., at p. 162; Ryde & Konstam's Rat. App. (1894—1904), at p. 194.

(*f*) [1895] 2 Q. B. 133; *supra*, p. 455.

(*g*) [1899] 1 Q. B. 667; [1900] A. C. 150.

(*h*) *Cartwright v. Sculcoates Union*, [1899] 1 Q. B., at p. 673, *supra*, p. 460.

(*i*) *Ibid.*, p. 679, *supra*, p. 461.

(*k*) [1895] 2 Q. B. 133.

rule of practice," regarded the trade which the premises actually command as the best test of the trade which they may be expected to command (*l*) ; but this would let in (in almost every case) the evidence excluded by the "convenient rule of practice" in *Dodds' Case*. On the other hand, Lord MORRIS, while approving the decision of the Court of Appeal in *Cartwright v. Sculcoates Union*, held that the publican might, if he chose, produce his books, but could not be compelled to do so (*m*) ; but this view seems inconsistent with the decision of Lord HALSBURY (in the Court of Appeal) that "all that could reasonably affect the mind of the intending tenant ought to be considered" (*n*), and also with the decision of COLLINS, L.J., that "the business that has been done is the most important factor in arriving at a conclusion" (*o*). For it seems that the amount of trade shown by the books to have been done upon the premises could reasonably affect the mind of an intending tenant, and would be an important factor in determining what rent he would pay.

The question whether evidence of the trade actually done by the occupier is inadmissible may have to be considered in practice at quarter sessions under the following circumstances: The valuers on either side may (and frequently do) base their valuations on their estimate of the weekly trade which an ordinary tenant is likely to do upon the premises, and these estimates may be (say) five barrels and ten barrels respectively. Now, assuming that the occupier is an ordinary tenant carrying on business with reasonable care and skill, it would surely assist the sessions in deciding which of the two valuations was based upon the most trustworthy estimate to hear evidence of the trade which the actual occupier was in fact doing. If in fact only five barrels a week are being sold, and there is nothing to suggest that any other ordinary tenant could sell more, the valuation based on an estimate of ten barrels is too high. If in fact ten barrels a week are being sold, and there is nothing to suggest that any other ordinary tenant carrying on business with reasonable care and skill would sell less, the valuation based on an estimate of five barrels is manifestly too low. And if the evidence is admissible at the option of the publican, it is plain that in most cases he would tender it when it told in his favour, and would conceal it when it told against him. But it is at least conceivable that it would be unfair to act on this assumption in every case: for a publican doing a smaller trade than the witnesses on either side estimated might be unwilling to disclose that fact to all the world in open court.

(*l*) See [1900] A. C. 157, 159; *supra*, pp. 461, 462.

(*m*) [1900] A. C. 155; *supra*, p. 461.

(*n*) [1899] 1 Q. B. 673; *supra*, p. 460.

(*o*) [1899] 1 Q. B. 679; *supra*, p. 461.

The Case of Bradford-on-Avon Union v. White.—In recent years there has been a great competition among brewers to purchase (or take leases of) public-houses, the object being to let them as tied public-houses. This competition has admittedly raised the price at which public-houses can be bought, and it is said that it has also raised the rents which can be obtained on lease. The question how far this affects the rateable value was considered in *Bradford-on-Avon Union v. White* (*p*). In that case it was not disputed that the rateable value must be measured by the rent which would be paid under a tenancy from year to year, and not under a lease (*q*). The sessions found that “if brewers were to be included in the area of competition as possible tenants of the premises, though they did not intend themselves to occupy the same, but only to convert such premises into a tied house, the rent at which the premises might reasonably be expected to let (*r*) would be sufficiently high to support a gross estimated rental of from 40*l.* to 45*l.*; and that if brewers were to be excluded from consideration as possible tenants of the premises, and if the area of competition was to be restricted to such intending tenants as would themselves occupy the premises as ordinary tenants of a free house, the rent at which the premises might reasonably be expected to let would only be sufficiently high to support a gross estimated rental of from 30*l.* to 35*l.* The sessions held that “it was the hereditament, independently of and without reference to any personal contract with brewers, that had to be assessed—in fact the free house, not excluding brewers as competitors, but treating them, like other tenants from year to year, as tenants of an hereditament unfettered by any personal contract,” and reduced the gross estimated rental to 35*l.* This decision was confirmed by the Queen’s Bench Division.

It is difficult to be sure of the effect of this case, because the sessions professed *not* to exclude brewers as competitors, although they fixed the assessment at an amount calculated on the assumption that they were so excluded. If this difficulty be met by suggesting that the sessions admitted the brewers as competitors, but only on the assumption that they were themselves to occupy the premises, and were not to underlet, then it becomes extremely difficult to reconcile the decision of the sessions with the judgment of one of the two judges who affirmed it. For CHANNELL, J., said (*s*):

“The Act of 1836 [the Parochial Assessments Act] says nothing about the hypothetical tenant occupying (*t*). The purpose for which a particular tenant

(*p*) [1898] 2 Q. B. 630.

(*q*) See *Staley v. Castleton* (1864), 33 L. J. M. C. 178; *supra*, p. 160.

(*r*) This seems clearly to mean “to let under a yearly tenancy,” as a tenancy for a term of years is excluded from consideration by the admission in the preceding paragraph.

(*s*) [1898] 2 Q. B., at pp. 637–639.

(*t*) This seems in direct conflict with *Smith v. Churchwardens of Birmingham* (1889), 22 Q. B. D. 211. 793; Ryde’s Rat. App. (1886–1890), 297, where WILLS, J.

wants the premises may possibly induce him to pay more than the market value for them ; but, unless that is the case, the purpose for which the tenant wants the premises has nothing to do with the matter, except in this way—that property is to be rated, as it is said, ‘*rebus sic stantibus*’—that is to say, a public-house is to be rated on the assumption that it continues a public-house. . . . To introduce the purpose for which the tenant is about to use the premises, and to consider whether that purpose is to carry on the trade himself, or to under-let it to someone else to carry it on, seems to me to introduce extraneous considerations similar to those which it was attempted to introduce in *Dodds v. South Shields* (u). If, in fact, there are so many competitors, whether brewers or others, desiring to obtain possession of public-houses, as to raise the value of public-houses in the district (the number of which is of course limited), that fact necessarily affects the sum which any tenant, whether brewer or not, may reasonably be expected to give. He will have to give that which the landlord will expect to get from others, or he will not be taken as tenant. I think that any circumstances which affect the annual value in the market must be taken into consideration in arriving at the gross estimated rental—that is at the sum which may reasonably be expected to be obtained from a tenant from year to year : and therefore the demand which exists for public-houses, whether by brewers or others, must be considered, for that demand directly affects the value. Any sums which are paid by the tenant, not by reason of the value of the premises, but for reasons personal to himself, ought not to be taken into account. . . . I do not think that the competition of brewers should be wholly excluded from consideration, but the special prices which they may give, owing to personal considerations, and not on account of the value of the premises, should be excluded, except so far as the possibility of such special prices being obtained raises the market value generally.

“**Special prices**” distinguished from “**market value.**”—In the passage above cited from the judgment in *Bradford-on-Avon Union v. White* (x), a distinction is drawn between the “special prices” which brewers would give for a public-house “owing to personal considerations” and the “market value” of the same premises ; and this creates some difficulty. Of course, it is easy to imagine a case where one particular person, and one only, would give a larger rent for a house (or would buy it at a higher price) than any other person : a man might be induced to give 1,500*l.* for the house in which he was born, although no other person would give more than 1,000*l.* for it. But that is not the case supposed : for the judgment proceeds upon the assumption that brewers *as a class* were competing to obtain public-houses, and that not merely one, but many, of that class would give “special prices” higher than other persons would give ; and (as the sessions had found) that

said: “To treat the hypothetical tenant (who, although a supposititious person, is still *ex hypothesi* a tenant or occupier) as himself a landlord and not in occupation, appears to me to be a contradiction in terms, and at variance with everything that I have ever understood to be the law.” And in the same case, in the Court of Appeal, LOPES, L.J., expressly describes the hypothetical tenant as “a tenant in actual occupation from year to year.”

(u) [1895] 2 Q. B. 133 ; *supra*, p. 455.

(x) [1898] 2 Q. B. 630.

brewers would give as rent 10*l.* a year more than other tenants would give for the same premises. It may possibly be right to exclude from consideration the rent which one person only will give, because if the premises have to be let again, they will not command the same rent (*y*) ; but the judgment excludes from consideration the rent given by one of a class for premises which would let to other members of the same class at the same rent. To regard rent as fixed by "the higgling of the market," and at the same time to estimate the "market value" by excluding the entire class of competitors who (more than any other class) make the market, seems to the writer somewhat illogical. Again, a distinction is apparently drawn between "the value of the premises" and "the special prices which brewers will give, owing to personal considerations." But the value of a thing, whether it be a public-house at Bradford-on-Avon or a private house in Belgrave Square, depends entirely upon the prices which purchasers or tenants will give "owing to personal considerations." It seems to the writer impossible to say that the "value" of premises to the tenant is less than the rent which many competitors are willing to give for it, merely because those competitors are influenced by "personal considerations."

It may perhaps be said that the "special prices" above referred to are the rents which brewers would give, not to occupy but to underlet the premises, and that as the hypothetical tenant must be assumed to be in actual occupation, such "special prices" must not be taken into account. But this suggestion saves one part of the judgment above quoted at the expense of another, for, as we have seen (*z*), the judgment (rightly or wrongly) decides that the hypothetical tenant need not be supposed to be in actual occupation.

To inquire into the motive which induces a particular class of tenants to give the rent which they are willing to give seems to be contrary to authority. "The Act of Parliament does not deal with the object, or motive, of the tenant. It only asks whether there is a reasonable expectation of finding a tenant, who will take the premises from any motive" (*a*). And in dealing with the School Board for London, where there was no other tenant who occupied the same position as the Board, it was held by the Court of Appeal that the rent which the Board would give, for whatever motive, must be taken into account in estimating the rateable value.

(*y*) The actual occupier must, however, be taken into account as one of the possible hypothetical tenants : see *R. v. School Board for London* (1886), 17 Q. B. D. 738 ; Ryde's Rat. App. (1886—1890), 235 ; *supra*, p. 154.

(*z*) *Supra*, p. 464, note (*t*).

(*a*) *Per* FRY, L.J. : *R. v. School Board for London*, Ryde's Rat. App. (1886—1890), 235, at p. 240. Compare also *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134 ; *supra*, pp. 221, 222.

The "goodwill" of a public-house.—It is often said that when a public-house is sold or let, the price or rent which the purchaser or tenant pays includes something more than the value of the premises themselves : that it is paid for the profit of the trade done on these premises, and covers the goodwill of that trade. It is not easy to say how far this fact affects the rateable value.

The first thing to be noticed is that although trade profits as such are not to be rated, the selling or letting value of the house in which a profitable trade can be carried on is by no means independent of the existence of those profits, and *may* be increased enormously by their amount (*b*). Rent is paid for the facility afforded by the premises to make profits in trade, and there is no such thing as the abstract value of premises apart from the trade for which they are (or can be) used.

But the main difficulty arises from the use of the word "goodwill." It is submitted that the problem is not a question of law, but of fact ; the question to be answered is, what is the "goodwill" of a public-house, and it is submitted that, when once the facts in each particular case are ascertained, the law applicable to the facts is clear.

Many cases are to be found in the Law Reports as to the meaning of the word "goodwill," dealing, for example, with the question, what passes on the sale of "goodwill." The explanation of the apparent conflict of judicial opinion lies in the fact that "what 'goodwill' means must depend on the character and nature of the business to which it is attached" (*c*). Without attempting to define what "goodwill" means in connection with any particular business, it may be noticed that "goodwill" has a very different meaning when used with reference to the following kinds of business :

- (1) The practice of a barrister, or an oculist ;
- (2) A bookstall or refreshment-room at a railway station, or a cloak-room at a theatre ;
- (3) A newspaper, such as the "Standard," where the names of the proprietor and editor, and the place of printing and publication are alike unknown to the vast majority of its readers.

Businesses may be roughly divided into three classes, viz., (1) those in which the profits depend entirely on personal skill

(*b*) *Vide supra*, pp. 165—169, and see especially the judgments of BLACKBURN, J., in *Mersey Docks v. Liverpool* (1873), L. R. 9 Q. B. 84, at p. 97, *supra*, p. 168 ; and in *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, at p. 144, *supra*, p. 168 ; see also *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at p. 38, *supra*, p. 166 ; *Cartwright v. Scolcoates Union*, [1900] A. C. 150, at p. 162 : *per* Lord BRAMPTON, *supra*, p. 462.

(*c*) *Per* Lord MACNAGHTEN, *Trego v. Hunt*, [1896] A. C. 7, at p. 23. In the judgments in that case, some attempts to give a definition of "goodwill" are collected. See also *Inland Revenue Commissioners v. Muller & Co.'s Margarine* [1901] A. C. 217.

and it is not necessary to the earning of the profits that the business should be carried on in any particular building; (2) those which depend entirely on the position of the premises in which they are carried on; and (3) those which depend partly on personal skill, partly on the special position of the premises. In cases belonging to the first class, the "goodwill" may be easily severed from the premises, and may be taken from one house to another; and the possession of such a "goodwill" does not enhance the rent which the owner of it will pay. In cases belonging to the second class, the "goodwill" cannot be severed from the premises: an incoming tenant, without paying anything to the outgoing tenant for the "goodwill" of his business, will be able to appropriate the whole of it by coming into occupation (*d*). The "goodwill" in such a case is "nothing more than the probability that the old customers will resort to the old place" (*e*): it may be said to "run with the land," and if so it will increase the rent which the land commands. In cases belonging to the third class (where profits depend partly on personal skill, partly on position of the premises), the term "goodwill" is generally used with reference to both kinds of profit. So far as the value of the "goodwill" is due to profits, the continuance of which depends on personal skill, it will not affect the rent: so far as its value is due to profits depending on the position of the premises, it will affect the rent. Suppose any ordinary tenant carrying on business with reasonable care and skill will be likely to make a profit of 500*l.* a year which he cannot make elsewhere, and the particular tenant in occupation is likely to make 600*l.*: if by "goodwill" we mean something estimated with reference to the probability of making 500*l.* a year, then the whole of the "goodwill" forms part of the value of the premises; but if the value of the "goodwill" is estimated with reference to the probability of making 600*l.* a year, then part of the "goodwill" does not form part of the value of the premises, but is personal to the tenant in occupation, and he may or may not be able to sell it or take it away with him.

The question, to which class the "goodwill" of a public-house belongs, appears to the writer to be purely a question of fact, the answer to which differs in different instances. It appears to be generally admitted that the value of the "goodwill" may be largely dependent on the personal qualifications of the occupier;

(*d*) See the judgment of Lord COLERIDGE, C.J., in *Llewellyn v. Rutherford* (1875), L. R. 10 C. P. 456, at p. 467, cited *infra*, p. 470; and note the finding in paragraph 27, L. R. 10 C. P., at p. 462, on which the judgment is based.

(*e*) See the description of "goodwill" given by Lord ELDON in *Cruttwell v. Lye* (1810), 17 Ves. 335, 346, cited in *Trego v. Hunt*, [1896] A. C. 7, at pp. 16, 23, where it appears that the passage above quoted must be taken, not as a general definition of "goodwill," but as a statement of what the "goodwill" in that particular case consisted; in other words, the statement is a finding of fact, not a rule of law; and it is so treated in *Ginesi v. Cooper* (1880), 14 Ch. D. 596, at p. 601.

one man may make a large profit when another man will become bankrupt. At the same time, it appears probable that the main element in determining the value of the "goodwill" is in most cases the position of the premises rather than the personal capacity of the occupier. And it must be remembered that the question is not how many persons would fail to make a profit, but whether there are other persons beside the actual occupier who are likely to succeed. If there are such persons, they will compete for the premises. The result appears to be that the rating authority in the first instance, and (on appeal) the sessions, must determine as a fact whether the "goodwill" of each public-house dealt with is wholly or in part attached to the premises or not; and if they find that it is, it appears to follow as a matter of law that the value of the "goodwill," so far as it is attached to the premises, must be regarded as part of the value of the premises, and must be taken into account in estimating the rateable value, just as much as the existence of the license.

Analogous decisions as to the meaning of "goodwill."—The following cases (which, however, do not directly decide questions of rating law) may be referred to as showing that "goodwill" *may* be so far connected with a house as to pass with it on a sale or mortgage, and to form part of its value.

In *Chisum v. Dewes* (*f*), the goodwill of an upholsterer's business was held to pass under a mortgage of the house in which it was carried on as being "nothing more than an advantage attached to the house." A similar decision was given as to a baker's business in *King v. Midland Rail. Co.* (*g*). In *Ex parte Punnett, In re Kitchen* (*h*), it was held that the goodwill of a public-house passed with it under a mortgage; and JESSEL, M.R., said, "In such a case the goodwill is the mere habit of the customers resorting to the house. It is not what is called a personal goodwill" (*i*). In *Llewellyn v. Rutherford* (*k*), the tenant of a public-house (under a covenant in the lease) was to be paid for the "goodwill" on going out, and the question arose whether he was entitled to a sum of money paid by the incoming tenant as a premium for a new lease, and whether the premium represented the value of the "goodwill" or part of the value of the house itself as distinguished from the "goodwill." In effect the court held that the "goodwill" was part of the value of the house. It was found as a fact in paragraph 27 of the case that "the business

(*f*) (1828), 5 Russ. 29.

(*g*) (1870), 17 W. R. 113.

(*h*) (1880), 16 Ch. D. 226.

(*i*) This is, of course, a finding of fact, which may or may not be true in other cases. Cf. *West London Syndicate v. Inland Revenue Commissioners*, [1898]

2 Q. B. 507; *infra*, p. 471.

(*k*) (1875), L. R. 10 C. P. 456.

was not in its nature capable of being to any appreciable extent transferred to another house in a different locality." Lord COLERIDGE, C.J., said (*l*) :

"Here is a public-house in which a thriving business has been carried on, having attached to it that which has been variously described as 'goodwill'—a thing which has an appreciable value and is every day bought and sold. That goodwill the tenant is about to forego. In the absence of a stipulation to the contrary, it would be an increased value of the premises, which on the tenant's going away would enure to the benefit of the landlord: he might let them for an increased rent, or he might obtain a premium."

And BRETT, J., said (*m*) :

"In some classes of business, where the trade has long been carried on in a profitable manner in a particular house, and a new tenant comes in and continues to carry on the same business there, it is found by experience that many, if not all, of the customers resort there as before (*n*). This is found so regularly to happen, that it has become usual to pay a money value for it, which is commonly called 'goodwill.' It may be that there may be a species of goodwill which may be the subject of bargain and sale, although not dependent on the business being carried on in any particular place: for instance, in the case of what are called quack medicines. But when we come to speak of the goodwill of a public-house, it is obvious that it is a thing which is attached to a locality."

In *Cooper v. Metropolitan Board of Works* (*o*), in considering what was meant by the "goodwill" of a tailor's business, and whether it passed under a mortgage of the shop, COTTON, L.J., said :

"Really 'goodwill' is a word of which few people understand the meaning. It is obvious that there are certain kinds of goodwill to which a mortgagee will be entitled. The goodwill which attaches to a particular house increases the value of that house, and therefore the mortgagee is entitled to that (*p*). If, for instance, there is a well known public-house, and, from its position being well known, people frequent it, the goodwill attaches to the house and adds to its value. But there may be other kinds of goodwill attaching to personal reputation which a man has made for himself. Of course that does not go to the mortgagee of the house, but is a thing personal to the man whose skill and whose name have acquired that goodwill."

It is submitted, that in distinguishing between the two kinds of goodwill here referred to, the test is not whether personal skill has created the goodwill, but whether it can be carried away to other premises. If the man who created it must leave it attached to the premises, an incoming tenant (in the absence of any special arrangement) will secure the whole without paying for it, and will give a larger rent in consequence.

(*l*) L. R. 10 C. P., at p. 467.

(*m*) (1875), L. R. 10 C. P. 469.

(*n*) Cf. *Crutwell v. Lye* (1810), 17 Ves. 335, cited *supra*, p. 468.

(*o*) (1883), 25 Ch. D. 472, at p. 479.

(*p*) Cf. *Pile v. Pile* (1876), 3 Ch. D. 36.

The cases above cited, and especially *Ex parte Punnett, In re Kitchen* (*q*), must be compared with the decision of the Court of Appeal in *West London Syndicate v. Inland Revenue Commissioners* (*r*). The question arose as to the liability to stamp duty, under s. 59 (1) of the Stamp Act, 1891 (*s*), whether, on the sale of the lease and goodwill of Fischer's Hotel, Clifford Street, the "goodwill" came under the word "land" or "any property except land." On the point for which the case is here cited the Lords Justices differed. A. L. SMITH, L.J., held that the "goodwill" was "a separate and distinct entity," and not land. RIGBY, L.J., held that the goodwill of Fischer's Hotel did not form part of the value of the lease; he said (*t*):

"In this particular case a great part of the value of the goodwill might, and probably did, arise from the name—some part certainly did. A West End hotel does not depend for its customers upon chance passers by, but to a great extent upon visitors to London who engage rooms beforehand. . . . Such a goodwill cannot be said to be in law inseparable from the house where the business is for the time being carried on, whatever the practical difficulty of separation in a given case. A great part of it would last on if the business were transferred to the next door."

This seems to accept the view that, in the case of an ordinary public-house, the "goodwill" forms (or may form) part of the value of the house. VAUGHAN WILLIAMS, L.J., held that in the case of a public-house, and in the case before the court, the "goodwill" formed part of the reversion of the landlord and part of the premises.

In dealing with the cases above cited, it must be remembered that if "goodwill" is so far attached to the rated premises that it forms part of them, and would pass under a mortgage, it necessarily follows that it would pass to a tenant under a yearly letting, and therefore must form part of that for which the tenant pays rent and must increase the rateable value: yet it is not necessary for the rating authority to show that the "goodwill" would pass (as a matter of conveyancing) under a letting of the premises. For many things tend to increase rent (and therefore to increase the rateable value) which are not part of the demised premises, and do not pass under the demise: because rent is regulated not by "that which the lease conveys a legal title to," but by "that which it gives the lessee the means of doing or enjoying" (*u*); for example, proximity to a market or a railway affects rent though neither be let to the tenant.

(*q*) (1880), 16 Ch. D. 226; *supra*, p. 469.

(*r*) [1898] 2 Q. B. 507.

(*s*) 54 & 55 Viet. c. 39.

(*t*) [1898] 2 Q. B., at p. 523.

(*u*) *R. v. Grand Junction Rail. Co.* (1844), 4 Q. B. 18, at p. 40, *supra*, p. 166.

CHAPTER XXV.

MACHINERY AND FIXTURES.

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Importance of questions as to rateability of machinery.—It is obvious that owing to the common use of machinery in the place of manual labour, and the increase in the value of the machinery used at the present day as compared with a hundred, or even fifty, years ago, the question where the line is to be drawn between what is rateable and what is not rateable machinery is more important now than ever it was. The general effect of the decisions during the last forty years has, undoubtedly, been to

swell the rateable value of property containing machinery. It will be seen that according to the most important of the modern decisions, viz., the *Tyne Boiler Works Case* (a), the question is not whether machinery is rateable in itself, but whether it ought to be taken into account as enhancing the value of the hereditament on which it is placed : so that the former question may be answered in the negative and the latter in the affirmative, as to one and the same piece of machinery. But while deciding that, as a proposition of law, certain descriptions of machinery (though not rateable in themselves) must be taken into account in valuing the hereditaments on which that machinery is found, the Court of Appeal appear to have left to the sessions to decide, as a question of fact, how that machinery is to be valued in taking it into account. The extreme difficulty of answering this latter question will be considered hereafter (b). The most recent decision of the High Court on the subject shows that it is wrong "to take into account" the value of machinery which is not rateable, by putting 5 per cent. upon the capital value, as though it were part of the rateable hereditament (c). And, as will be seen hereafter, this may prove to be the turning point in the current of decisions (d).

In dealing with property, such as railways and gas works, the rateable value of which is calculated from the profits which the hypothetical tenant could make, additional importance attaches to the question of the rateability of machinery. For if machinery be no part of the rateable hereditament, the hypothetical tenant must be supposed to provide it out of his own capital, and a deduction must be made from the profits of the undertaking by way of allowance for interest on the tenant's capital (e). So that the value of the necessary machinery (if not part of the rateable hereditament) not only ceases to be an addition to, but constitutes a deduction from, the value which the property would otherwise possess.

Attempts at special legislation with regard to machinery.—

In the year 1887, and in many subsequent years, bills were introduced into Parliament defining what machinery should or shall not be taken into account ; different stages have been reached from time to time, but none of the bills became law so as to affect England. In the final report of the Royal Commission on Local Taxation (dated May 28th, 1901), the majority of the commissioners signed the following recommendation : " That

(a) *Tyne Boiler Works Co. v. Longbenton* (1886), 18 Q. B. D. 81 ; Ryde's Rat. App. (1886—1890), 241 ; *infra*, p. 485.

(b) *Vide infra*, pp. 495—500.

(c) *Crockett and Jones v. Northampton Union* (1902), Ryde & Konstam's Rat. App. (1894—1904), 269 ; *infra*, p. 489.

(d) *Vide infra*, p. 492 *et seq.*

(e) *Supra*, pp. 257, 279 ; see also note (a), *infra*, p. 478.

in estimating the rateable value of any hereditament occupied for trade, business or manufacturing purposes, there shall be excluded from the assessment any increased value arising from machines, tools or appliances which are not fixed, or are only so fixed that they can be removed from their place without necessitating the removal of any part of the hereditament. But the value of any machinery, machine, or plant used in or on the hereditament for producing or transmitting first motive power, or for heating or lighting the hereditament, should be included." So far as Scotland is concerned, this recommendation has (in substance) been carried into effect by the Lands Valuation (Scotland) Amendment Act, 1902 (2 Edw. 7, c. 25), which, however, applies to Scotland only. It will be seen hereafter that the recommendation is mainly intended to meet the decision in *Tyne Boiler Works Co. v. Longbenton* (*f*), and would substitute a very different rule for the rule laid down in that case, although it probably would not entirely alter the result arrived at in that case.

The dates of decisions must be considered.—Under the Statute of Elizabeth (*g*), as we have already seen, the rate could be imposed in respect of personal as well as real property, although to make a person liable in respect of personal property he must be an inhabitant, and not merely an "occupier of lands, houses, etc." Consequently, under the Statute of Elizabeth, when a person was rated in respect of machinery, it was no answer (if he was an inhabitant) to say that the machinery was personal property, and not part of the freehold. But although personal property in the hands of an inhabitant was in law rateable, it was in practice so seldom (if ever) rated, that the judges had not unfrequently expressed doubts as to whether it were legally rateable at all. Ultimately this conflict between the practice and the law of rating led, as we have seen (*h*), to the passing of the Poor Rate Exemption Act, 1840 (*i*), which enacts that "it shall not be lawful for the overseers of any parish . . . to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock in trade or any other property." This leaves as the persons to be rated the parson or vicar, and the occupier of lands, houses, etc. Taking this statute in connection with s. 1 of the Parochial Assessments Act, 1836 (*k*), which contemplates only the rating of corporeal hereditaments (*l*), it now appears that when it is sought to rate a person in respect of machinery, the question ought to be whether he is an occupier of "lands," etc., and (if so)

(*f*) [1886] 18 Q. B. D. 81 : *infra*, p. 485.

(*g*) 43 Eliz. c. 2, s. 1 : *vide supra*, pp. 2, 3.

(*i*) 3 & 4 Vict. c. 89 : set out in Appendix II.

(*k*) 6 & 7 Will. 4, c. 96 : set out in Appendix II.

(*l*) See *R. v. Lumsdaine* (1839), 10 A. & E. 157.

(*h*) *Vide supra*, p. 4.

whether the machinery in question is part of the land (*m*). Unfortunately, the earlier cases decided after the passing of the Poor Rate Exemption Act, 1840, seem to have ignored that Act, and to have assumed that it made no difference to the rateability of machinery; and until the *Tyne Boiler Works Case* (*n*), the effect of the Act appears not to have been specially considered by the courts. In that case it was held by the Court of Appeal (in substance) that the Act made no difference, and as this decision is founded on a series of cases extending over a long term of years, it may, perhaps, be too late to re-open the question. Whatever be the correct view of the law, it will probably be convenient to consider separately the cases decided before, and those decided after, the passing of the Poor Rate Exemption Act, 1840; and then consider in what way the rule laid down by the Court of Appeal must be applied in practice.

Cases decided before the Poor Rate Exemption Act, 1840.—

The earliest case relating to machinery appears to be *R. v. St. Nicholas, Gloucester* (*o*); in which the corporation of Gloucester, being possessed of a house, had erected in the street leading by it a machine for weighing waggons, etc., for the use of which payments were made. The steelyard was in the house, which was called "the machine-house." It was found that the house, independent of the machine, was worth 5*l.* a year; that the profits of the machine were about 40*l.* a year; and the corporation were rated for "the machine-house" at 24*l.* The sessions held that the profits of the machine were not rateable and reduced the rate to 5*l.* But this order was quashed, and Lord MANSFIELD, in holding that the rate on 24*l.* was right, said:

"It is not in terms said that the machine is annexed to the freehold; but the nature of the thing supplies the defect in the expression. Indeed, the expression sufficiently shows it. What is the house? It is 'the machine-house.' They are one entire thing, and are together rated with the common known name which comprehends both. . . . The house may be said to be built for the steelyard, and not the steelyard for the house."

And BULLER, J., said, "The conclusion of the case is strong to show that the justices considered the machine as part of the house, for the question they refer to the court is whether the profits are rateable. And so long as they are received, they undoubtedly are. It is like the case of the *Cheltenham Spa*" (*p*).

(*m*) This appears to be still true, notwithstanding *Tyne Boiler Works Co. v. Longbenton* (1886), 18 Q. B. D. 81, *infra*, p. 485; for that case decides that if a thing is not part of the freehold, it cannot itself be rated, though it may be taken into account in rating the land.

(*n*) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241; *infra*, p. 485.

(*o*) (1783), 1 T. R. 723 n.; a fuller report of the judgment is found in 1 Const., 163, and Cald. 262, from which the extracts quoted in the text are taken.

(*p*) *R. v. Miller* (1777), 2 Cowp. 619; 1 Const. 155; *supra*, p. 268, note (*p*).

It must be noticed (1) that Lord MANSFIELD appears to have held that, as a fact, the machine was part of the freehold (*q*), in which case there could be no doubt of its rateability under the Statute of Elizabeth; (2) that it was stated that under the local Acts relating to Gloucester, personal as well as real property was liable to the poor rates, so that the machine must in any case have been rateable under the local Acts. Consequently, the real question decided by the court was that the profits of the machine were rateable (*r*).

WILLES, J., said (*s*), "If a billiard table stand in a house, and the house should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let, at the advanced rent."

Of course, if the billiard table be regarded as part of the house, there is no doubt that the statement is correct. But if the table be regarded as a mere chattel, and the rent be paid for the use of the chattels in the house, as well as for the house itself, then unless personal property be rateable, the statement requires some qualification. For it can hardly be contended that when an increased rent is given for a furnished house (*i.e.*, for both house and chattels) the rateable value must be increased in proportion (*t*).

In *R. v. Hogg* (*u*) it was held that a house and a carding-machine for manufacturing cotton, rented as one entire subject, were rateable. It was found that the machine was not fastened to the floor (*x*), but might be moved at pleasure: that it was generally worked with water, but frequently by hand. It is remarkable that two out of three judges based their judgments on the principle that personal property was rateable as it undoubtedly was at the date of the decision.

In *R. v. Birmingham and Staffordshire Gas Co.* (*y*), in making the valuation of buildings containing machinery, the masonry and brickwork for boilers, vats, and chimney-stacks were included, but not the steam-engines themselves, and all machinery and apparatus used for the purpose of manufacturing, whether fixed or not, was

(*q*) A contrary conclusion was arrived at with regard to a somewhat similar machine in *Ex parte Astbury, In re Richards* (1869), L. R. 4 Ch. 630, *infra*, p. 508.

(*r*) Note that the profits amounted to 40*l.*, and the rate was on 24*l.*, so that considerable deductions must have been allowed.

(*s*) 1 Const., at p. 164.

(*t*) See, for example, the judgment of BLACKBURN, J., in *R. v. Lee* (1866), L. R. 1 Q. B. 241, at p. 253, *infra*, p. 481. In *R. v. White* (1792), 4 T. R. 771 (in which some personal property was held to be rateable), it was said that "household furniture is not rateable, because it produces nothing." This rather suggests that, if let with a house, it would be rateable; so that the rateability of the furniture would depend upon the question whether the tenant of the house had purchased or hired the furniture. This most illogical result shows how very little the rateability of personal property had been considered and understood when the earlier cases were decided.

(*u*) (1787), 1 T. R. 721.

(*x*) ASHURST, J., inferred that it was fastened to the walls, but there was no finding to that effect.

(*y*) (1837), 6 A. & E. 634.

excluded. As some of the machinery was stated to be "let into the ground, or otherwise attached to the freehold," there could be no doubt that the rate based on such a valuation was bad, but Lord DENMAN added, "even where the machine has not been attached, a house has been held rateable in respect of it, if the value of the house has been increased by the machine."

In *R. v. Guest* (z), the question related to machinery used in ironworks, which, though attached to buildings, could be removed out of them "without injury either to the machinery or the buildings or the soil, and without displacing any part thereof." The court held it to be rateable, and (affirming the decision in *R. v. Birmingham and Staffordshire Gas Co.*) (a), Lord DENMAN, C.J., thus stated the general principle (b) :

"Real property ought to be rated according to its actual value, as combined with the machinery attached to it, without considering whether the machinery be real or personal property, so as to be liable to distress or seizure under a *fieri facias*, or whether it would descend to the heir or executor, or belong, at the expiration of a lease, to landlord or tenant" (c).

Summary of the cases decided before 1840.—We have seen that in *R. v. St. Nicholas, Gloucester* (d), the question was not really whether the machines were rateable, but whether the profits made by the machine were rateable. In *R. v. Hogg* (e), two of the three judges based their decision that the engine was rateable on the principle that personal property was rateable. And *R. v. Birmingham and Staffordshire Gas Co.* (f), and *R. v. Guest* (g), did little more than affirm the rateability of the machinery in question in each case, on the same ground. It is true that in the latter case Lord DENMAN, C.J., says that "real property ought to be rated as combined with the machinery attached to it," and that the machinery to which the decision related was, apparently, in fact attached; but it does not seem to have been intended to limit the rule to machinery which is attached. For Lord DENMAN cites with approval *R. v. Birmingham and Staffordshire Gas Co.*, in which the rule was held to extend to cases where the machine was not attached.

The judgment of Lord DENMAN, C.J., in *R. v. Guest* has never been overruled and is in fact supported by *Tyne Boiler Works Co. v. Longbenton* (h); and if these cases are still good law, it

(z) (1838), 7 A. & E. 951.

(a) (1837), 6 A. & E. 634, *supra*.

(b) 7 A. & E., at p. 956.

(c) This principle was adopted and affirmed in *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587, at p. 610, *infra*, p. 478.

(d) (1783), 1 T. R. 723 n.; 1 Const. 163; *supra*, p. 475.

(e) (1787), 1 T. R. 721, *supra*, p. 476.

(f) (1837), 6 A. & E. 634, *supra*.

(g) (1838), 7 A. & E. 951, *supra*.

(h) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241; *infra*, p. 485.

seems hardly necessary to cite cases dealing with the distinction between real and personal property, and the relative rights of landlord and tenant, or heir and executor; but some of these cases will be mentioned hereafter (*i*).

Cases decided after the Poor Rate Exemption Act, 1840.—The effect of this Act (*k*) upon the question of the rateability of machinery has been already referred to (*l*); but unfortunately in the earlier cases decided after 1840 the Act was not even cited in argument, and the court were not asked to consider whether the exemption of personal property under the Poor Rate Exemption Act, 1840, had rendered the earlier cases decided before that Act inapplicable.

In *R. v. Southampton Dock Co.* (*m*), the machinery in question was described as “fixtures or fixed plant, consisting of cranes, steam-engines, shears, derricks, dolphins, and other like ponderous machinery, attached to the freehold and essential to the business of the company”; and the sessions found as a fact that the fixtures were “capable of being detached from the freehold as easily and with as little injury to it as other fixtures put up for the purposes of the trade or business of the tenant, and usually valued as between incoming and outgoing tenant.” The court held that the whole was to be rated (*n*) on the authority of *R. v. Birmingham and Staffordshire Gas Co.* (*o*) and *R. v. Guest* (*p*), and Lord CAMPBELL, C.J., added: “It is of the greatest importance that a rule upon such a subject which has been laid down, and acted upon, should be adhered to; and we see no reason why this rule should be now disturbed.”

The decision in *R. v. Southampton Dock Co.* (*m*) was followed in *R. v. North Staffordshire Rail. Co.* (*r*), where the test of rateability was stated in slightly different language, by COCKBURN, C.J.:

“The question is whether the company are entitled to a deduction in respect of various articles, being things necessary for carrying on the business of the company. The articles to which such a question may have reference may be divided into three classes—first, things movable, as office and station furniture; secondly, things so attached to the freehold as to become part of it; and, thirdly, things which, though capable of being removed, are yet so

(*i*) *Vide infra*, pp. 501—508.

(*l*) *Vide supra*, p. 474.

(*k*) 3 & 4 Vict. c. 89: see Appendix II.

(*m*) (1851), 14 Q. B. 587.

(*n*) It is perhaps still open to question whether machinery, which (according to the *Tyne Boiler Works Case* (1886), 18 Q. B. 81; *infra*, p. 485) must be taken into account in valuing the rateable hereditament, may yet be regarded as part of the tenant's plant, on the capital value of which interest may be claimed, so as to form a deduction from the net profits. The distinction between rating machinery as part of the rateable hereditament and “taking into account” was hardly realised at the date of *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587, and *R. v. North Staffordshire Rail. Co.* (1860), 30 L. J. M. C. 68.

(*o*) (1837), 6 A. & E. 634; *supra*, p. 476.

(*p*) (1838), 7 A. & E. 951; *supra*, p. 477.

(*r*) (1860), 30 L. J. M. C. 68, at p. 72.

far attached as that it is intended that they shall remain permanently connected with the railway, or the premises used with it, and remain permanent appendages with it, as essential to its working. It is clear that in respect of the first class of articles a deduction should be allowed. It is equally clear that no deduction should be allowed as to the second. As to the third, the question is finally settled by the decision of this court in the case of *R. v. Southampton Dock Co.*"

Lead chambers in chemical works.—In *R. v. Haslam* (*s*) the appellants were rated for chemical works, on which were found certain lead chambers for the manufacture of sulphuric acid. These chambers were about 50 feet long by 13 feet wide, and 13 feet high; they were made of sheet lead and each weighed several tons. Each chamber was connected by pipes (which were made vapour-tight) with a boiler affixed to the freehold; but these pipes could be removed without injuring the freehold, and, when they were removed, the chamber rested on the ground (on a specially prepared foundation) by its mere weight, and might be lifted from the soil without displacing any part of the freehold. The sessions had confirmed a rate which included the increased value arising from the chambers, and this decision was confirmed by the Queen's Bench. PATTESON, J., said (*t*):

"We do not think it necessary in this case to determine whether the chambers erected on the appellants' premises are, or are not, annexed to the freehold, which is rather a question of fact for the court of quarter sessions to find, than for us to decide: because we are of opinion that, according to the principle laid down in the various cases on this subject, the rateable value of the premises is undoubtedly increased by the use of those chambers. In *R. v. Liverpool Exchange* (*u*), the court, after citing several previous decisions, say: 'These cases establish the principle that the advantages attendant upon a building, either in respect of its situation or the mode of its occupation, are to be taken into the account in estimating its rateable annual value, wherever those advantages would enable the owner of the building to let it at a higher rent than it would otherwise fetch' (*x*). . . . The chambers are used as part of the fixed machinery of the works, attached to the other buildings for the purpose of being so used, and necessarily so attached in the use of them, although capable perhaps of being removed without injury to the other buildings. Nor can it be denied that, if the appellants were to underlet the premises, they would fetch a higher rent, as they now stand, with these chambers upon them, than they would if the chambers were removed. The rate must be confirmed."

There is perhaps a fallacy concealed in the last sentence above quoted. A furnished house would fetch a higher rent, as it stands with the furniture in it, than it would fetch if the furniture were removed. But as the rateable value of the house is the rent which would be given *for the house*, the rent given for the furnished

(*s*) (1851), 17 Q. B. 220.
(*t*) 17 Q. B., at p. 227.

(*u*) (1834), 1 A. & E. 465.
(*x*) See pp. 495—500, *infra*.

house must be apportioned (*y*). If the tenant who takes a furnished house has in addition to buy, or give a separate rent for, the furniture, it is not absolutely certain that he will give a higher rent for the house itself (*z*).

Plant connected with gasworks.—In *R. v. Lee* (*a*), it was held that in valuing gasworks, a deduction should be made for the value of meters placed on the premises of consumers (as forming part of the tenant's capital) : but that no deduction should be made for retorts, purifiers, steam-engines fixed to the soil, for boilers, for the movable parts of the gasholders, or for various trade fixtures, such as pumps and exhausters, which would be removable by a tenant who had erected them, during his term. This decision was based upon *R. v. Southampton Dock Co.* (*b*) and *R. v. North Staffordshire Rail. Co.* (*c*), and was stated to be the effect of applying the tests laid down by those cases to the particular things used in connection with gasworks. The rule was, however, re-stated in slightly different language, and it is to be noticed that the court appeared to have ignored the decision in *R. v. Guest* (*d*), that rateability did not depend on the question whether the articles formed part of the freehold, so as to be liable to distress, etc. ; for they refer to some of the cases dealing with that question. After saying that the meters were nothing more than ordinary chattels, COCKBURN, J., said, speaking of the other articles (*e*) :

“If the company desired to abandon this undertaking, and to let the gasworks to another company or any individual, what the lessee would propose to take and pay rent for would not be land independent of all these articles, all of them essential to the manufacture, viz., gas. These retorts, purifiers, and gasholders are all as essential to the using and occupying these premises as gasworks, as any other thing that can possibly be suggested, however permanently attached to the freehold. They seem, therefore, clearly to come within the principle laid down in *R. v. North Staffordshire Rail. Co.* (*f*).

“There is another principle applicable here, on which the court proceeded in *Walmesley v. Milne* (*g*). . . . When these purifiers, gasholders, steam-engines, and boilers, which are absolutely essential to the working of the manufacture, were erected, it was with the view to their remaining permanently there for the benefit of the inheritance. I therefore think, on

(*y*) See the first sentence cited from the judgment of BLACKBURN, J., in *R. v. Lee* (1866), L. R. 1 Q. B. 241, at p. 253 ; *infra*, p. 481.

(*z*) See *Crockett and Jones v. Northampton Union* (1902), Ryde & Konstam's Rat. App. (1894—1904), 269, and the remarks thereon, *infra*, pp. 489, 492.

(*a*) (1866), L. R. 1 Q. B. 241. (*b*) (1851), 14 Q. B. 587 ; *supra*, p. 478.

(*c*) (1860), 30 L. J. M. C. 68 ; *supra*, p. 478.

(*d*) (1838), 7 A. & E. 951 ; *supra*, p. 477.

(*e*) L. R. 1 Q. B., at p. 251.

(*f*) (1860), 30 L. J. M. C. 68 ; *supra*, p. 478.

(*g*) (1859), 7 C. B. (N.S.) 115 ; *infra*, p. 504. In that case it was held that articles “firmly annexed to the freehold (after the date of a mortgage) for the purpose of improving the inheritance, and not for any temporary purpose,” became the property of the mortgagee.

both grounds, these articles (except the meters) must be considered, if not as forming part of the freehold, still as so far connected with it as to be intended to be permanently attached to it, and therefore they ought to be taken into account in determining the rateable value of the land, and the premises in question, and that no deduction can be allowed in respect of them."

And BLACKBURN, J., said (*h*) :

"If you are rating a house let furnished, you will ascertain how much was paid in respect of the furniture, and the things in no way forming part of the rateable premises, and deducting that from the rent paid for the furnished house, the remainder would be the rent given for the house itself, for which it would be rateable. The question, then, would arise, and must arise, what the things are for which you are to make an allowance and deduction, whether they are in themselves part of the premises, or are, like the furniture, not part of the premises. Now, there are some fixtures that are attached to the premises and are part of the premises, although, as between landlord and tenant and heir and executors, there is a right to remove them. Clearly no allowance is to be made for those. There are other things, such as movable furniture, which are manifestly not part of the house, and for which allowance must be made. But there are intermediate things, with respect to which it is sometimes very difficult to determine, whether they are made part of the premises or not; and upon those the question mainly arises in the present case. The rule laid down has been that, where the things are attached to the premises, so as to be part of the premises, although they are removable, still they are part of the premises, although there may be a right to remove them. But if things or chattels be fixed to the premises, but so as to be still chattels, being only fixed and steadied for the purposes of use there, they remain chattels altogether, so that they would not be part of the premises at all; they would never cease—to use the phrase in the case of *Hellawell v. Eastwood* (*i*)—to have the character of movable chattels; although fixed for the purpose of the enjoyment of them, still they remained movable chattels. The common illustration is a mirror, which, in the ordinary way, would be screwed to the wall; still it remains a movable chattel, and is no part of the premises. On the other hand, a grate which is built into a chimney, although it is capable of being removed by a tenant, would still be fixed to the premises, so that it would be part of the premises, and therefore part of what would be considered to be let to the hypothetical tenant, and for which he would pay rent. . . .

"In *Hellawell v. Eastwood* the court put it clearly and distinctly that the two important elements to consider are, first, the degree of annexation (*k*); and, secondly, if it be in fact annexed, the object of the annexation, whether it was for the improvement of the inheritance, that it was attached to a part of the inheritance, or whether it was for the enjoyment only of the thing itself. [After referring to *Walmsley v. Milne* (*l*), *Hellawell v. East-*

(*h*) L. R. 1 Q. B., at p. 253.

(*i*) (1851), 6 Ex. 295, at p. 313; *infra*, p. 502. In that case, "mules" for spinning cotton, fastened to the floor, were held to be distrainable for rent, and not to be part of the freehold.

(*k*) This seems to suggest that, unless annexed, the thing cannot be brought into account; but see as to this point, *Tyne Boiler Works Co. v. Longbenton* (1886), 18 Q. B. D. 81; *infra*, p. 485.

(*l*) (1859), 7 C. B. (N.S.) 115; *infra*, p. 504.

wood (m), *R. v. North Staffordshire Rail. Co. (n)*, and *R. v. Southampton Dock Co. (o)*, BLACKBURN, J., continued:] The idea is throughout the same—if the things are annexed, though but slightly, with a view to the enhancement of the inheritance, and the permanent improvement of it, they may be considered as part of it for which a hypothetical tenant would be considered rateable.”

And LUSH, J., said (*p*):

“The question is, what is the rateable subject which is comprised within the premises to be rated? Now I apprehend that the premises to be rated are to be taken as they are with all their fittings and appliances by which the owner has adapted them to a particular use, and which would pass as a part of the premises by a demise of them to a tenant. That seems to me to express what in other words has been expressed in the cases referred to by the other members of the court. Wherever the things have become so far a part of the premises that they would pass by a demise of these premises, they would form a part of the rateable subject of the inheritance for the purpose of rating.”

Silk-weaving machines.—The decision in *R. v. Lee (q)* was followed by two cases which—at first sight at least—seem to turn the current of decisions the other way. In *R. v. Halstead (r)* the machinery in question consisted of machines for silk throwing and weaving, which were fifty or sixty feet long and three or four feet wide. They were fastened to the floors by screws passing through holes in the feet of the machines, such fastenings being for the sole purpose of steadying the machines when in use. The case found that the same object could be obtained by making the machines heavier or placing weights upon them. The machines were separate and distinct from each other, and could be removed without damage to the machinery or the buildings, and were commonly bought and sold as chattels. The machines were driven by water or steam power by means of bands connecting the machines with the driving gear or shafting. The court held that all of the machines were not rateable (*s*). COCKBURN, C.J., said (*t*):

“The chattels and machinery are no doubt fixed to the freehold, but not so as to make them part of the freehold. According to the recent cases, if the chattels are so fixed to the freehold, that on a demise they would pass with the premises, then they may be taken as part of the rateable value. But here the sessions find they are not so attached to the freehold, but are merely fixed with a view to steady them. Therefore the finding concludes the case.”

(*m*) (1851), 6 Ex. 295; *infra*, p. 502.

(*n*) (1860), 30 L. J. M. C. 68; *supra*, p. 478.

(*o*) (1857), 14 Q. B. 587; *supra*, p. 478.

(*q*) (1866), L. R. 1 Q. B. 241; *supra*, p. 480.

(*r*) (1867), 32 J. P. 118.

(*s*) With this decision *cf. Reynolds v. Ashby & Son*, [1903] 1 K. B. 87; *infra*, pp. 507, 508; and *Lyon v. London, City and Midland Bank*, [1903] 2 K. B. 135; *infra*, p. 508; both of which cases, however, dealt with the relative rights of mortgagor and mortgagee.

(*t*) 32 J. P., at p. 119.

(*p*) L. R. 1 Q. B., at p. 257.

And BLACKBURN, J., said :

“ I do not change the opinion that I expressed in *Staley v. Castleton* (u). It is a correct principle in ascertaining the rateable value of the property, to take all the property that enhances the value of the occupation—in short, you must take more than the four walls of the building into account. That has been done here. . . . The question as to the machines will be, are they part of the premises or not ? They may be severable by the sheriff, or by any one else, but so long as they are attached to the building so as to be part of the premises, they would be liable to be taken into account. But in saying they are attached, we must look to the character in which they are so attached, whether it is in the sense of being accessions to the fixed property, or merely attached in the sense of steadying the machines while using them. Here they are fixed merely to steady them, and in no other sense, and, therefore, I think they form no part of the rateable value.”

Tanks in a distillery.—In *Chidley v. West Ham* (v), the questions related to distillery premises, which contained tanks (forming the roofs of rooms and houses), boiling backs, mash tuns, pumps (used for pumping grain, worts, etc.), and other articles necessary for distilling. These were all held to be not rateable, on grounds thus stated by BLACKBURN, J. (y) :

“ In this case, which is perhaps not so stated as to bring out the precise point intended to be, or which might have been raised, the court is asked if certain articles described are liable to be rated. There is no difficulty as to the rule of law on the subject, though there is considerable difficulty in applying the rule. Whatever is fixed to the realty so as to pass as landlord's fixtures (z) in a demise of the premises, must be taken to be part of the premises for the purpose of ascertaining its rateable value. The question what kind of fixture come under this description, is treated at length in *Holland v. Hodgson* (a). I am not prepared to say that the various articles described in the present case may not be taken into account as enhancing the value of the premises, but that question is not asked, and we are only to say whether the things are rateable (b). That depends, as is stated in *Holland v. Hodgson*, on

(u) (1864), 33 L. J. M. C. 178 ; *vide supra*, p. 160. In that case (33 L. J. M. C. at p. 182), BLACKBURN, J., is reported to have said : “ If any of the machinery was so affixed to the soil as to become part of it, we must take it as if it were permanently built into it ; and even if it were not attached to the soil it would affect the yearly value.” This appears to be the first indication of the view that machinery which is not rateable in itself may yet be taken into account as enhancing the value of the premises on which it is placed.

(v) (1874), 32 L. T. 486.

(y) See 32 L. T., at pp. 488, 489.

(z) This suggests that tenants' fixtures must not be taken as part of the premises. If so, the passage is not easily reconciled with the judgment of BLACKBURN, J., in *R. v. Halstead* (1867), 32 J. P. 118, *supra*, p. 482, and still less easily reconciled with the decision in *R. v. Guest* (1838), 7 A. & E. 951, *supra*, p. 477, that the question whether the articles are removable by the tenant is irrelevant to the question of rateability. Moreover, in *R. v. Lee* (1866), L. R. 1 Q. B. 241, *supra*, p. 480, certain trade fixtures which would be removable by the tenant during his tenancy, were held to be rateable. See also p. 502, *infra*.

(a) (1872), L. R. 7 C. P. 328 ; *vide infra*, p. 506. It must be noticed that this case related to the rights of mortgagor and mortgagee.

(b) See the remarks on this passage in *Tyne Boiler Works Co. v. Longbenton* (1886), 18 Q. B. D. 81, at pp. 92, 94 ; Ryde's Rat. App. (1886—1890), 241, at pp. 254, 255 ; *infra*, p. 486. See also pp. 495—500, *infra*.

whether they are annexed to the freehold, and if they are annexed in a certain sense, with what intent they were so annexed. Applying these rules, it appears by the case that all the articles are chattels, well known in the trade, and sold separately both as new and second-hand. They are not attached to the premises except in the sense that the weight of the article keeps it steady, and though one or two are screwed down, and some attached to pipes, which again are attached to steam-engines, or to what are clearly fixtures, this alone will not make them fixtures. . . . All the items are nothing more than chattels which rest and steady themselves by their own weight or with the slight assistance of a screw, and are not fixtures and not rateable as part of the premises."

This decision has probably gone further than any other in the direction of holding to be not rateable articles which may be described as having a quasi-chattel character. And it is the first case in which the court definitely drew the distinction between articles which can be rated and articles which (though not in themselves rateable) can be taken into account as enhancing the value of the rateable hereditament (*c*). Unless this distinction be observed, it seems almost impossible to reconcile the decision with *Type Boiler Works Co. v. Longbenton* (*d*). The question how the distinction is to be carried out in actual practice, will be considered hereafter (*e*).

Machinery on shipbuilding premises.—In *Laing v. Bishopwearmouth* (*f*), the appellant's premises had been rated as being enhanced by reason of extensive machinery attached to them, for the business carried on there, of building and repairing ships. The machinery, which was of a ponderous character, was stated in the judgment to be "affixed to the premises" (*g*). The court upheld the rate. After referring to *R. v. Birmingham and Staffordshire Gas Co.* (*h*), *R. v. Guest* (*i*), *R. v. Southampton Dock Co.* (*k*), *R. v. North Staffordshire Rail. Co.* (*l*), as settling the law, COCKBURN, C.J., said (*m*) :

"Applying the rule established by these decisions to the present case, it appears to us, after having carefully considered the character of the machinery in question, that the whole of it, though some of it may be capable of being

(*c*) But see also note (*u*), *supra*, p. 483.

(*d*) (1886). 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241. See also *Reynolds v. Ashby & Son*, [1903] 1 K. B. 87, at p. 101.

(*e*) *Vide infra*, pp. 495—500.

(*f*) (1878). 3 Q. B. D. 299.

(*g*) The machinery was described at considerable length in the case: see 3 Q. B. D. at pp. 300—303. The judgment speaks of the whole of the machinery as "permanently attached." The view of the facts taken by the court must be assumed to be correct, although the machinery included *inter alia* "a portable engine with boiler mounted on cast-iron wheels, so that it could be moved from place to place," and a "weighing machine mounted on wheels": see 3 Q. B. D., at pp. 301, 302.

(*h*) (1837). 6 A. & E. 634; *supra*, p. 476.

(*i*) (1838). 7 A. & E. 951; *supra*, p. 477.

(*k*) (1851). 14 Q. B. 587; *supra*, p. 478.

(*l*) (1860). 30 L. J. M. C. 68; *supra*, p. 478.

(*m*) 3 Q. B. D., at p. 306.

removed without injury to itself or to the freehold, is essentially necessary to the shipbuilding business to which the appellant's premises are devoted, and must be taken to be intended to remain permanently attached to them so long as those premises are applied to their present purpose."

The Tyne Boiler Works Case.—The Court of Appeal in *Tyne Boiler Works Co. v. Longbenton (n)*, though they re-stated the rule in different language, professed to be expressing the idea underlying all the previous decisions, which were considered to be consistent with each other: and they affirmed and emphasized the conclusion suggested in *Chidley v. West Ham (o)*, that machinery which is not rateable in itself, because it is not part of the rateable hereditament, may yet be taken into account as enhancing the value of the hereditament, when the hereditament itself is being valued (*p*). In this case, for the first time, the effect of the Poor Rate Exemption Act, 1840 (*q*), on the question of the rateability of personal property was considered.

In the *Tyne Boiler Works Case (r)*, the machinery and plant in question were used by the appellants for the purposes of their business: some portions were not attached either to the soil or to the buildings, but rested by their own weight upon the ground, or on specially prepared foundations: some portions were bolted or screwed to the walls or floors. All the machines were worked by belts from the main shafting. The machines and plant could be, and were, taken down and removed when and as required for repairs or re-arrangement, or for any other purpose, without injury to themselves or structural damage to the hereditaments. The object of the attachment of the machines was to steady them in working. The case stated that "the mode in which the rateable value of the premises was arrived at was by ascertaining the gross estimated rental which a tenant from year to year might reasonably be expected to be willing to give for the use of them (inclusive of the machinery and plant) (*s*), and by making the statutory deductions from such rental." The sessions confirmed the rate, and this decision was affirmed by the Queen's Bench Division and by the Court of Appeal. Lord ESHER, M.R., said (*t*):

"I am of opinion that the question which was disputed between these parties at the sessions, and which the sessions decided, was whether or not

(*n*) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241.

(*o*) (1874), 32 L. T. 486; *supra*, p. 483.

(*p*) The practical application of this decision is considered *infra*, pp. 495—500.

(*q*) 3 & 4 Vict. c. 89; see Appendix II.

(*r*) The machinery is described somewhat more fully in the report of the proceedings in the court below: see 17 Q. B. D. 651.

(*s*) This seems to show that in the rate appealed against, the machinery and plant was in fact rated, as being in itself rateable. This is not easily reconcilable with the view of the Court of Appeal that the machinery, though not in itself rateable, ought to be taken into account in estimating the value of the rateable hereditament.

(*t*) 18 Q. B. D., at pp. 36—88.

the articles and machinery in question were to be taken into consideration as enhancing the rateable value of the hereditaments. . . . It is said with respect to some of the cases, that they are not authorities because of the provisions of the statute passed with regard to the rating of personal chattels. Difficulties had arisen with regard to the question how far personal chattels were to be taken into consideration in rating the inhabitants of a parish. Those difficulties were set at rest by the statute 3 & 4 Vict. c. 89 (*u*), but it had nothing to do with the question how the value of real property is to be arrived at for the purpose of rating it. Nobody says that these machines are to be rated as personal chattels. The question is whether they are to be taken into account in estimating the rateable value of the premises, which it is admitted are liable to be rated. The statute, therefore, makes no difference, and all the cases with regard to estimating the value of real property remain untouched by it. [After referring to the series of cases already quoted, ending with *Laing v. Bishopscarmouth* (*x*), in which the word 'attached' was used ; Lord ESHER, M.R., continued :] Does the court there mean by the word 'attached' that the thing must be bolted or screwed to the premises, or some physical mode of attachment ? I do not think so. I think that they could not have meant to differ from PATTESON, J., when he said (*y*) that it was unnecessary to inquire whether the machinery was or was not annexed to the freehold. I do not think the court meant by the word 'attached,' that physical attachment should be the test. It becomes, therefore, necessary to consider what is meant by the word 'attached' in the decisions on the subject. I may not succeed in expressing the rule which is to be deduced from the cases with absolute accuracy, but in endeavouring to do so, I will leave out the word 'attached' or any other similar expression. I believe the rule really to be that things which are on the premises to be rated, and which are there for the purpose of making, and which make the premises fit, as premises, for the particular purpose for which they are used, are to be taken into account in ascertaining the rateable value of such premises. . . . It seems to me that, when things are brought into that category, they would pass by a demise of the premises as such, as between landlord and tenant : and that so the test proposed by LUSH, J. (*z*), and that which I propose become in substance identical. . . . With regard to the case of *Chidley v. West Ham* (*a*), I do not say that the court was not right in deciding as they did on the case as it came before them, but if the right question had been asked them, I cannot understand how it could have been possible to say that the articles there in question ought not to have been taken into account in arriving at the rateable value."

With this judgment LINDLEY, L.J., agreed, but he limited the scope of his judgment by saying : "Nothing is included, so far as I understand the nature of the machinery, which would be mere loose machinery, and which would not pass to a tenant to whom the works were demised." With this limitation, the rule laid down by LINDLEY, L.J., is practically identical with that adopted

(*u*) The Poor Rate Exemption Act, 1840 : see Appendix II.

(*x*) (1878), 3 Q. B. D. 299 ; *supra*, p. 484.

(*y*) In *R. v. Haslam* (1851), 17 Q. B. 220, at p. 227 ; *supra*, p. 479.

(*z*) *R. v. Lee* (1866), L. R. 1 Q. B. 241, at p. 257 ; *supra*, p. 480.

(*a*) (1874), 32 L. T. 486 ; *supra*, p. 483.

by LUSH, J., in *R. v. Lee* (*b*) ; with which also Lord ESHER said that the rule laid down by himself agreed. LINDLEY, L.J., further said of *Chidley v. West Ham* (*c*), “the true view of that case is, that it was decided on the ground that the tanks in question had been rated as mere personal property. I do not understand the case as deciding that they could not have been taken into account at all in fixing the rateable value of the premises.”

Lace-making machines.—In *Gifford, Fox & Co. v. Chard* (*d*), the principle of the *Tyne Boiler Works Case* was acted upon and applied to the bobbinet machines used in a lace factory, and fixed to the floor so as to steady them, but not so fixed as to be made part of the buildings : it was held by the Court of Appeal that such machines must be taken into account as enhancing the value of the buildings. This decision appears either to overrule, or to get rid of the effect of *R. v. Halstead* (*e*).

Hydraulic cranes in docks.—In *London and India Docks v. Poplar Union* (*f*), there were a large number of hydraulic cranes, worked by power supplied through underground mains. The cranes travelled on iron rails, ten feet to thirteen feet apart, used only for the purpose of such cranes. The rails extended no further than the quay on which they were constructed, and were embedded in and formed part of the quay. The cranes could be and were moved from one quay to another as occasion required : but, in order to move them, it would be necessary to lay down new rails, where no sufficiently hard pavement existed, or they could be transported by water, by means of floating derricks. The cranes varied in weight from thirteen to sixteen tons. The cranes were moved either by means of hand-gearing attached to them, or by hydraulic capstans and levers. The cranes when in use were firmly and securely attached to the hydraulic main by means of a flexible tube capable of resisting a pressure of 700 lbs. to the square inch. While so attached the cranes could be moved a distance of six feet either way from the point of attachment. The Queen’s Bench Division held that the travelling cranes must be regarded as landlord’s fixtures, enhancing the value of the undertaking, and not as tenant’s fixtures, the value of which should be included as part of the tenant’s capital, interest on which should be deducted from the profits of the undertaking. In so deciding, the court relied almost entirely on *Tyne Boiler Works Co. v. Longbenton* (*g*).

(*b*) (1866), L. R. 1 Q. B. 241, at p. 257 ; *supra*, p. 480.

(*c*) (1875), 32 L. T. 486.

(*d*) (1890), 6 T. L. R. 431 ; 63 L. T. 249.

(*e*) (1868), 32 J. P. 118 ; *supra*, p. 482.

(*f*) (1900), Ryde & Konstam’s Rat. App. (1894—1904), 245.

(*g*) (1886), 18 Q. B. D. 81 ; *supra*, p. 485.

Consideration of the Tyne Boiler Works Case.—The decision of the Court of Appeal in *Tyne Boiler Works Co. v. Longbenton* (*h*) gets rid of the necessity of showing that articles are “attached” to the rateable hereditament in order that they may be taken into account in estimating rateable value: and this is said to be supported by earlier decisions. It may be worth while to notice what those decisions were; but it must be remembered that the *Tyne Boiler Works Case* may still be right, even if it be wrong to say that it is supported by the earlier decisions.

The principle laid down is based upon *R. v. Hogg* (*i*), *R. v. Guest* (*k*), *R. v. Southampton Dock Co.* (*l*), and *R. v. Haslam* (*m*). Now in *R. v. Hogg*, one of the three judges based his decision on the view that the machines (which were held to be rateable) were in fact attached to the walls, while the other two judges decided on the ground that personal property was rateable, as it undoubtedly was in 1787, the date of the decision. In *R. v. Guest*, it was held that “real property ought to be rated according to its actual value, as combined with the machinery *attached* to it, without considering whether the machinery be real or personal property.” This decision also (putting aside all question as to the meaning of the word “attached”) rests on the rateability of personal property (*n*). But this rateability was destroyed three years later by the Poor Rate Exemption Act, 1840 (*o*). The cases decided before that Act, if they rest only on the rateability of personal property, are no longer good law. This was, however, overlooked in *R. v. Southampton Dock Co.* (*p*), and *R. v. Haslam* (*q*), which merely adopt the rule laid down in *R. v. Guest* (*r*), decided before the passing of the Act. It must be further noticed that in *R. v. Southampton Dock Co.*, the machinery in question was in fact “attached to the freehold.” And in *R. v. Haslam* (*s*), although PATTESON, J., does say that it is unnecessary to determine whether the sulphuric acid chambers there in question were “annexed to the freehold,” he also speaks of them as “attached to the other buildings, and necessarily so attached in the use of them.”

It therefore appears that, before the decision in *Tyne Boiler Works Co. v. Longbenton* (*t*), but subsequently to the passing of

(*h*) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241.

(*i*) (1787), 1 T. R. 721; *supra*, p. 476.

(*k*) (1838), 7 A. & E. 951; *supra*, p. 477.

(*l*) (1851), 14 Q. B. 587; *supra*, p. 478.

(*m*) (1851), 17 Q. B. 220; *supra*, p. 479.

(*n*) The word “attached” can hardly mean “connected so as to form part of the freehold,” for the machinery would then cease to be personal property.

(*o*) 3 & 4 Vict. c. 89: see Appendix II.

(*p*) (1851), 14 Q. B. 587; *supra*, p. 478.

(*q*) (1851), 17 Q. B. 220; *supra*, p. 479.

(*r*) (1838), 7 A. & E. 951; *supra*, p. 477.

(*s*) See 17 Q. B., at pp. 227, 228; *supra*, p. 479.

(*t*) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241; *supra*, p. 485.

the Poor Rate Exemption Act, 1840, there was very little authority for the proposition that articles not "attached" to the freehold could be rated. It must also be noticed that if "attachment" to the freehold be unnecessary, it is difficult to see why BLACKBURN, J., should have said in *R. v. Lee (u)*, "the two important elements to consider are, first, the degree of annexation, and secondly, if it be in fact annexed, the object of the annexation."

But in the *Tyne Boiler Works Case*, the Court of Appeal decided, not that things which are not "attached" to the freehold can be rated, but that they must be taken into account in estimating the value of the rateable hereditament itself. The application of this proposition remains to be considered.

It has been contended that the proper application of the rule laid down in the *Tyne Boiler Works Case* is to assume that the machinery in question is included in the letting to the hypothetical tenant; and this contention (if accepted) would, of course, make the rateable value equal to the rent of the buildings and land, plus the rent of the machinery. But it is submitted that this contention is fatal to the case of the rating authority. For, if the proper way to "take machinery into account" is to assume it to be included in the letting to the hypothetical tenant supposed by the Parochial Assessments Act, 1836, the necessary corollary appears to be that only such machinery can be taken into account as can be supposed to be let to the hypothetical tenant. Now the definition of net annual value makes it equivalent to the rent at which the "hereditament" might be expected to let. Nothing, therefore, is let to the hypothetical tenant which is not part of the rateable hereditament, and if nothing can be taken into account which is not part of that hereditament, the application of the rule laid down in the *Tyne Boiler Works Case* is reduced to a minimum.

Again, the decision in the *Tyne Boiler Works Case* seems to be reduced to an absurdity by the contention that the right way to "take machinery into account" is to assume that it is included in the letting to the hypothetical tenant. For the roofs and walls of the buildings, even the very land itself, is assumed to be included in the letting, and in that way is rated: and if machinery (which is not part of the hereditament) may not be rated, but must be included in the letting at the rent which is the measure of rateable value, the Court of Appeal have drawn a distinction without a difference, and have elaborately decided nothing.

Crockett and Jones v. Northampton Union.—In *Tyne Boiler Works Co. v. Loughbenton (x)* the Court of Appeal declined to answer the question how machinery, which is not rateable in

(u) (1866), L. R. 1 Q. B. 241, at p. 254; *supra*, p. 481.

(x) (1886), 18 Q. B. 1). 81; *supra*, p. 485.

itself, may be taken into account as enhancing the value of the rateable hereditament. This question must, however, be answered whenever the judgment has to be applied in practice. There has been a decision of the High Court—*Crockett and Jones v. Northampton Union* (*y*)—dealing with this question, on which very diverse interpretations have been put at quarter sessions in subsequent cases (*z*). In *Crockett and Jones v. Northampton Union*, the premises in question consisted of a boot manufactory containing two classes of machinery. The first class included gas-engines, shafting, boilers, and the like, which were admittedly part of the freehold. The other class, called in the case “No. 2 machinery,” was thus described in the case: “This No. 2 machinery is what is known as tenant’s machinery. The machines are the property of and provided, maintained, and repaired by the tenant. They would not be found as part of the premises or concern, on a demise thereof by the landlord, nor be taken into consideration in fixing the rent. They would be either purchased from a previous occupier or provided afresh by the succeeding tenant, and are of a movable character. The machines are all separate and distinct. They are easily removable for exchange or repair or other purposes without the least injury to the machine or fabric. Some of them, such as the small sewing machines, can be readily shifted from place to place. Most of these machines require to be steadied for working, and are fixed to the floor or on stands or tables by nuts or bolts for this purpose only. Some few are heavy and do not require to be fixed. None of them are so fixed as to be attached to the freehold. Some of them do not need to be screwed or bolted, but can be steadied by putting their footplates under wedges. They are for the most part driven by power from main shafting and pulleys overhead by means of light bands. For a considerable portion of them, however, this is not necessary, and they could be driven by hand or foot. The manufacture of ordinary boots and shoes can be carried on by machines or by hand, but so long as the process of this particular manufacture is carried on in this factory by machinery, these or similar machines are essential and are intended to remain always on the premises: that is to say, machines of this description.” The respondents contended that they were entitled to add to the value of the buildings as buildings only, such an amount as would take into consideration the No. 2 machinery; and that this was to be ascertained by taking a percentage upon the capital value of the machines.

(*y*) (1902), Ryde’s & Konstam’s Rat. App. (1894—1904), 269; 72 L. J. K. B. 320; 18 T. L. R. 451.

(*z*) See *The Clarendon Press Case*, and *Devon and Exeter Newspaper Co. v. Exeter Union*, *infra*, pp. 493, 494.

The contention of the appellants was thus stated in paragraph 17 of the case : “The appellants stated that they had taken into account the No. 2 machinery so far as the law allows or requires it to be considered as enhancing the value of the premises. That is to say, they had taken into account the suitability of the premises to receive such machinery, and the fact that such machinery was to be found on the premises.” [Then followed further contentions which it was held in the High Court to be unnecessary to criticise.] The recorder at quarter sessions held (a) that, upon the authority of *Tyne Boiler Works Co. v. Longbenton*, the No. 2 machinery was to be taken into account, and that the real test was the value of the buildings as fitted with machinery ; (b) that the only reasonable way to do this was by a valuation of such machinery, that the mere fact of its being in the manufactory was not enough, nor the suitability of the building to it ; (c) that the valuation must be separate from the buildings ; (d) that such valuation should be based upon the actual cost of the machines as applied to the purpose for which the premises were intended (making the usual deductions). The court held that the recorder’s decision was wrong, and sent the case back to him to find the rateable value according to the rule laid down in *Tyne Boiler Works Co. v. Longbenton* (a).

Lord ALVERSTONE, C.J., said (b) :

“ [The *Tyne Boiler Works Case*] is binding upon us, and for the purposes of this case I adopt it. It is to be noted that the Master of the Rolls did not say how the machines were to be taken into account. I think that the subsequent decision of the House of Lords, not, I admit, upon the same matter but upon a kindred matter in the *Mersey Docks Case* (c), shows that once that question is put to the sessions by itself, it becomes a question of fact which the quarter sessions have to answer for themselves, giving the best light, and obtaining the best information they can. It is in that connection, and in that connection only, that the nature of the machinery, its value, its life, and things of that kind, may become material ; because, of course, it is self-evident that machinery which will last a very short time, machinery which is replaceable in a day or two, is in a very different position as far as making premises fit for the trade which is carried on in them, as compared with machinery which is of a large and heavy description, and which will require considerable trouble to take in and out, and which could not be replaced except with considerable derangement of the premises as such. . . . The appellants I think substantially in the earlier part of paragraph 17 (d) have stated the contention correctly, . . . in substantial conformity with the rule laid down by the Court of Appeal in the *Tyne Boiler Works Case*. . . . By the other side it was contended : you are to have a separate valuation of the machinery ; you are to rate it as though you were, so to speak, rating the machinery as a rateable hereditament, and you are to add that to the value of the building. The recorder . . . has adopted

(a) (1886), 18 Q. B. D. 81.

(b) Ryde & Konstam’s Rat. App. (1894—1904), at pp. 284—286.

(c) *Mersey Docks v. Birkenhead*, [1901] A. C. 175 ; *supra*, p. 167.

(d) This part of the paragraph is set out *supra*.

that contention, and he said that the valuation must be separate from the buildings, and that such valuation should be based upon the actual cost of the machines as applied to the purpose for which the premises are intended. In my opinion that is adopting a principle which is inconsistent with the rule laid down in the *Tyne Boiler Works Case* (e). I think that the valuation ought not to be separate in its ultimate result. That you may have to inquire into value in order to get at the figures may be possibly true (f), but the valuation ought to be an answer to the question put by Lord ESHER, M.R., how much is the rateable value of the premises enhanced by the presence of this machinery as it is there and intended to permanently remain there ? ”

In the formal order sending the case back the proper principle of assessment to be substituted for the recorder's rulings (b), (c), and (d), set out above on p. 491, was stated to be : “That the rateable value ought to be based upon the suitability of the premises to receive the No. 2 machinery, and the fact that such machinery was upon the premises, and not of necessity upon the value of such machinery.”

Remarks on *Crockett and Jones v. Northampton Union*.—

The effect of the decision in *Crockett and Jones v. Northampton Union* (g) will be seen by examining first the propositions which it negatives. (1) It decides that in valuing a hereditament containing machinery which is not itself rateable, it is wrong to “take the machinery into account” by putting a percentage on the capital value of the machinery, and adding the sum thus arrived at to the annual value of the buildings apart from the machinery. (2) The decision shows that the rateable value of a hereditament containing machinery which is not itself rateable does not mean the value of the buildings added to the value of the machinery. The effect of this appears to be that the rateable value is not the rent which would be given for the buildings and the machinery, where the landlord provided both for the tenant in return for that rent only, but the rent which would be given for the buildings alone (if the machinery were already fitted therein) by a tenant who would have to pay something in addition for the machinery, either by buying it or hiring it from the landlord or some outgoing tenant. (3) The decision in *Crockett and Jones v. Northampton Union* further shows, that although as a matter of law the sessions are bound to take into account machinery falling within the rule laid down in the *Tyne Boiler Works Co. v. Loughbenton* (h), the question how and to what extent such machinery will affect the rateable value is a question of fact for

(e) (1886), 18 Q. B. D. 81.

(f) Cf. *The Clarendon Press Case*, *infra*, p. 493; but see also the remarks thereon, *infra*, p. 500.

(g) (1902), Ryde & Konstam's Rat. App. (1894—1904), 269; *supra*, p. 489.

(h) (1886), 18 Q. B. D. 81; *supra*, p. 485.

the sessions alone to determine, and they are not bound as a matter of law to find that there has in fact been any enhancement of the rateable value of the hereditament by reason of the machinery. For Lord ALVERSTONE, in giving judgment in the *Northampton Case*, said: "It is a question of fact whether the presence of the machinery *does or does not* enhance the rateable value." And again: "The case must go back to the recorder in order that he may answer the questions in his own way and assess the amount of the enhanced rateable value, *if any*, upon the basis laid down in the *Tyne Boiler Works Case*."

Quarter sessions decisions based on *Crockett and Jones v. Northampton Union*.—There have been two cases at quarter sessions, both professing to follow the rule laid down in *Crockett and Jones v. Northampton Union* (*k*), in which results at first sight very different were arrived at. In *Oxford University v. Mayor, etc., of Oxford* (*No. 2*) (*l*), which related to the buildings of the Clarendon Press, one of the witnesses for the appellants admitted that the rateable hereditament was enhanced in value to the extent of 250*l.* a year, but contended that it was immaterial whether the machinery was worth 40,000*l.* or 20,000*l.* The recorder of Oxford held, on the evidence, that the presence of the machinery was insufficiently considered, and in giving judgment said: "I am unable to understand why a large quantity of useful machinery does not give a greater enhancement of value to the premises than a smaller (*m*). It was said that the machinery being the tenants', there was no difference in the rent which the landlord could exact owing to its presence. This proves too much, for it leaves the witness without reason for adding anything to the value of the premises, although he conceded an enhancement to the extent of 250*l.* It also fails to recognise the increased rent which premises can command by reason of their fitness to carry on at once a going concern. Though the case of *Crockett and Jones v. Northampton Union* decides that, in the ultimate figure arrived at as the rateable value, no separate valuation of machinery should be given as distinguished from the hereditament to be rated, I can find nothing in the judgment which entitles a witness, when seeking that ultimate figure, to blindfold himself as to the amount and value of the machinery which enhances the value of the hereditament. . . . The Chief Justice nowhere asserts that it is illegitimate to arrive at the ultimate figure of the rate by a process which *inter alia* may include a valuation of the machinery and the placing of a percentage on that value."

(*k*) (1902), Ryde & Konstam's Rat. App. (1894—1904), 269; *supra*, p. 489.

(*l*) (1902), Ryde & Konstam's Rat. App. (1894—1904), 266.

(*m*) See the remarks hereon, *infra*, p. 500.

In *Deron and Exeter Newspaper Co. v. Exeter Union* (*n*), which related to printing works and offices, the appellants had recently taken a new lease, granted after the greater part of the machinery in dispute had been placed upon the premises. The machinery in dispute (which consisted mainly of printing machines) was admittedly not so physically attached to the hereditament as to become part of it, and the boilers and main shafting were admittedly part of the freehold. The respondents contended as to the machinery in dispute that the value of the hereditament was to be assessed on the assumption that the tenant, by virtue of his occupation, got the use of the machinery free, or as included in the rent, and that the only practicable mode of applying the principle, and that which the court was bound in law to adopt, was to take a reasonable percentage (in this case put at 5 per cent.) on the present value of the machinery, and to treat the annual value of the premises as enhanced by that amount. The appellants contended that the machinery in dispute was to be taken into account, not as if its use was obtained gratuitously, or was included in the rent, but only as enhancing the value of the hereditament to the extent to which the tenant would pay more rent, taking into consideration the fact that the machinery was there, provided at his expense; and that the proper measure of enhancement was the additional rent which the tenant would pay by reason of the presence of the machinery, which was either his own or belonged to some other person ready to let it to him. The recorder rejected the respondents' and adopted the appellants' contention, and fixed a rateable value based on the rent actually paid, adding a small sum for the additional enhancement due to machinery added after the rent was fixed. In the course of his judgment he said: "The present tenant or any tenant proposing to carry on the same business, and able to hire the machinery from him, would give the landlord something more for the premises than other people would do, because they are adapted to receive the machinery, and because the machinery is there installed and ready to hand. I can see no other enhancement of the value of the hereditament, and I am strongly of opinion that it would be wrong to take this machinery into account in the same sense as the plant of a gasworks or a railway. . . . I decline to consider the rateable value of the premises as enhanced by a percentage on the value (either cost value or present value) of the machinery, and I hold that the true enhanced value is the rent which would be paid for the premises in their present state by the present tenant, or any other person who bought or hired the machinery from him."

(*n*) (1903), Ryde & Konstam's Rat. App. (1894—1904), 101.

In the case just cited the machinery in dispute was (as it happened) provided by the actual tenant in occupation, and not by his landlord. But this fact was of course immaterial. The rateable value of the premises would be the same if the tenant in occupation had bought up the freehold before putting in the machinery, or after buying the freehold had let the premises, with the machinery and all the furniture and chattels thereon, at a much larger rent to a new tenant carrying on the same business.

How machinery, if not rateable in itself, must be taken into account.—The decisions in *Tyne Boiler Works Co. v. Longbenton (o)* and *Crockett and Jones v. Northampton Union (p)* left undecided the question how machinery which is not in itself rateable may be taken into account as enhancing the rateable value of the hereditament; and the latter of those cases shows that the question whether the presence of such machinery enhances the rateable value of the hereditament is a question of fact for the sessions, which may be answered either in the affirmative or the negative. The problem will become much clearer if it be remembered that by “enhancing the rateable value” we mean increasing the rent which a tenant may reasonably be expected to give. And no estimate of the hypothetical tenant’s rent is possible, unless the hypothesis makes it clear at whose expense the machinery, which is not in itself rateable, is to be provided. Let us now see by means of a hypothetical case in which these points are made clear what considerations will affect the rent.

Let us suppose that a manufacturer is about to establish a manufactory, in which will be a great deal of valuable machinery provided at the expense of the manufacturer of such a character that, though not rateable in itself because not part of the rateable hereditament, it, “will make his premises fit as premises for the particular purpose for which they are to be used”: it will then come within the rule laid down in the *Tyne Boiler Works Case*, and, when the machinery has been erected, it must be taken into account in estimating the rateable value of the premises. Let us assume that the manufacturer is a tenant both of the rateable hereditament itself and of the non-rateable machinery; but that he takes the rateable hereditament itself from one person (whom we will call the landlord), and the non-rateable machinery from other persons (whom we will call the engineering company). Let us assume that there are no abnormal or exceptional circumstances affecting either the hereditament or the tenant: so that the landlord is not bound to accept the tenant’s terms, nor the tenant the landlord’s; because the landlord can find other suitable tenants,

(o) (1886), 18 Q. B. D. 81; Ryde’s Rat. App. (1886—1890), 241; *supra*, p. 485.

(p) (1902), Ryde & Konstam’s Rat. App. (1894—1904), 269; *supra*, p. 489—492.

and the tenant can find other suitable premises. The "higgling of the market" fixes the rent for the rateable hereditament itself (without the non-rateable machinery) at 1,000*l.* a year. After making the necessary deductions for repairs, insurance, and renewal of the rateable hereditament, if that hereditament had to be valued without the machinery, the rent would *primâ facie* warrant a rateable value of, say, 750*l.* The tenant now proceeds to hire the non-rateable machinery: and a similar "higgling of the market" fixes the rent at 1,000*l.* a year. To simplify the hypothesis, let us assume, in the first place, that the cost of fixing the machinery is so small as to be inappreciable, and that the time occupied in fixing is so short that it does not affect the question; and, further, that for 1,000*l.* a year the engineering company will erect the machinery in the first instance and renew each portion as it wears out: so that the rent of 1,000*l.* a year represents the whole of the tenant's outgoings for machinery. If this machinery were itself rateable, and were separately rated, the rent of 1,000*l.* a year would, *primâ facie*, warrant (after making the necessary deductions for repairs, etc.) a rateable value of, say, 650*l.* a year. But it is not rateable, though it may be taken into account in estimating the rateable value of the hereditament. How is this to be done?

Let us assume that a new valuation is made immediately after the machinery has been erected, and put into thorough working order. If both the machinery and the hereditament itself were to be rated, then *primâ facie* the rateable value would be represented by the sum of the two rents (minus the deductions), or 1,400*l.* If the hereditament alone were to be valued, apart from the machinery, the rateable value would *primâ facie* be 750*l.*; but though the machinery may not itself be rated, we may take it into account if it enhances the rateable value of the hereditament, that is, if the presence of the machinery will induce the tenant to give a higher rent for it. Will it do so? It is submitted that in the circumstances supposed it would not. It is plain that the tenant will not pay for both the machinery and the rateable hereditament itself more than 2,000*l.* a year in all: if more is asked of him, he will go to another landlord and another engineering company, and get similar premises (with similar machinery) for 2,000*l.* The engineering company will not take less than 1,000*l.* a year, and therefore the landlord must be content with 1,000*l.* a year, from which must be deducted the cost of the repairs, etc., leaving a rateable value of 750*l.* And it is difficult to see on what ground the landlord could expect more than 1,000*l.*: for the rent of 1,000*l.* a year must have been fixed with the knowledge that the tenant intended to put machinery in the rateable hereditament; and if 1,000*l.* a year was a fair rent then, it can hardly be said that it

has ceased to be so, when that which was expected to happen has in fact happened. And any special advantages which the rateable hereditament possessed for the erection of machinery, must have been taken into account on both sides when the rent was fixed at 1,000*l.* For example, the main shafting (which is generally, if not always, treated as part of the rateable hereditament) would be covered by the rent, which, but for the shafting, would have been fixed at something less than 1,000*l.* But unless the building be regarded as one intended to contain machinery, the presence of the shafting would diminish, rather than increase, its value, by reducing the space available for storage or other purposes.

It may perhaps be said that the result above suggested is due to the peculiar form of the hypothesis, viz., that the tenant hires the machinery; and that if the tenant be assumed to be owner of the machinery, a different result will be arrived at. But it is submitted that this is not so. If the tenant agrees to pay 1,000*l.* a year for the rateable hereditament itself, the rent being fixed by the "higgling of the market," and agrees to pay that rent in order to get premises on which to place machinery of which he is already the owner, he will not be willing to give—and cannot be expected to give—a higher rent after he has put in the machinery than he agreed to before. For, if more rent is asked, he will say that, sooner than pay that higher rent, he will take equally suitable premises elsewhere at the rent of 1,000*l.* a year.

One further point remains to be noticed: it may be said that if a tenant agrees to pay a rent of 1,000*l.* for a rateable hereditament before the machinery is put in, after it is put in he may well be willing to give a higher rent to avoid the expense of removing his machinery. This possibility has been purposely disregarded: first, because a landlord would be unlikely to seek to raise the rent at the risk of losing the tenant: and, secondly, because such an attempt to extort a higher rent resembles what has been called a "blackmailing contract" (*q*), which ought not to be taken into consideration, inasmuch as in the hypothesis of a tenancy under the Parochial Assessments Act, 1836, neither party must be supposed to be able to take an unfair advantage of the other, and there must be a reasonable expectation that the tenancy will last more than a year (*r*).

It may perhaps be said that the proper hypothesis is to assume that the landlord provides the machinery, and then to inquire what rent the tenant would give for the building fitted with such machinery. But it is submitted that in considering how far machinery will affect rateable value, this form of hypothesis is

(*q*) *North and South Western Junction Rail. Co. v. Brentford Union* (1888), 13 App. Cas. 592, at p. 594: *vide supra*, p. 227.

(*r*) *Vide supra*, p. 162.

either (1) unnecessary. or (2) confusing. (1) It is unnecessary if the machinery is so far attached as to become part of the rateable hereditament, in which case the machinery becomes rateable *per se*, and the rule in the *Tyne Boiler Works Case* (s) is not wanted, and does not apply. (2) If the machinery is not part of the rateable hereditament, the hypothesis is confusing. For if all that the tenant pays is the rent, which entitles him to the possession of the buildings and the use of the machinery, then the rent is of a composite character, and its component parts must be analysed. It is like the rent paid for a house let furnished, and therefore, as was said by BLACKBURN, J., in *R. v. Lee* (t), “you must ascertain how much was paid in respect of the furniture, and the things in no way forming part of the rateable premises, and deducting that from the rent paid for the furnished house, the remainder would be the rent given for the house itself, for which it would be rateable.” If therefore the rent paid for the machinery has to be separated from the rent paid for the building, it appears to be much simpler, and therefore better, to assume that the two rents are paid to different people. There might be some objection to this assumption; if it could be shown that the two rents added together would be less than the combined rent paid to one person, —the landlord who provided both buildings and machinery. But it is difficult to understand how (apart from the question of delay, which is dealt with below) the tenant would be willing to give a larger sum in the form of a combined rent paid to one person, if he could get the same accommodation cheaper by paying separate rents for buildings and machinery to different persons.

Expense and delay involved in fixing machinery.—In the preceding paragraphs it was assumed, in order to simplify the hypothesis, that the cost of fixing the machinery was so small as to be inappreciable, and that the time occupied in fixing was so short that it did not affect the question. It now remains to be considered how far the expense and delay which are generally involved in fixing machinery would affect the rent which would be given for a building where the tenant found the machinery fixed and ready for immediate use. This aspect of the problem (it is believed) owes its origin to a suggestion made by CHANNELL, J., in the course of the argument in *Crockett and Jones v. Northampton Union* (u), as follows: “Assume that there are two houses perfectly alike, one of which has never been occupied, and a man going into it will have to go to expense in finding blinds, electric light fittings, and so on; and next door to it is an exactly similar house

(s) (1886), 18 Q. B. D. 81; *supra*, p. 485.

(t) (1866), L. R. 1 Q. B. 241, at p. 253; *supra*, p. 481.

(u) (1902), Ryde & Konstam's Rat. App. (1894—1904) 269, at p. 278.

which has already got the things in, but which (if he goes in) he will have to buy on a valuation. Would he not in fact be likely to give a little more—very little more I should think in that case—for the house which is already fitted to his hand, although he will have to buy the things, than he would offer for the empty house, which he would have to fit up for himself ?”

Before the question can be answered, it must be more fully stated. If it is assumed that the fittings are partly worn out, old-fashioned, not likely to suit the taste of other tenants, and of little value if removed from their present position, it is possible that the outgoing tenant (if they belonged to him) would be glad to sell them for a sum much below the cost of new fittings ; and then the incoming tenant might save, say, 50*l.*, and so might possibly be induced to give a larger rent to the landlord. But it is obvious that he would not give the whole of the 50*l.* every year to his landlord, because he saved 50*l.* on coming in. Nor would he put up with second-hand fittings, unless he saved something by it. On the other hand, if the fittings were as good as new, and easily removable, the outgoing tenant would probably want a price so little below prime cost that the difference would have no appreciable effect on the rent the tenant could be got to pay.

Now apply similar considerations to machinery. Suppose a machine can be bought for 100*l.*, delivered at the door of a manufactory ; that it will cost 10*l.* to put in position and fix it ; and say 10*l.* to unfix it, and carry it to the nearest place where it can be sold, if not wanted. To the tenant in occupation who has bought and fixed it, it is worth 110*l.* ; but after it is fixed, and even before it has been used, its value drops to 90*l.*, if it has to be sold for use elsewhere. If an incoming tenant finds (say) 100 such machines fixed, all brand new, and all exactly of the kind which he wants, *and if the outgoing tenant will sell them at 90*l.* each*, the incoming tenant will be able to save 20*l.* on each of the 100 machines, and so may possibly be induced to give the landlord some additional rent. But if we assume (as we have done, *supra*, p. 495) that there are other premises which the incoming tenant can take, it is not at all certain that he will let the landlord have all the benefit arising from the accident that the new tenant happens to want the machinery already fixed. The “higgling of the market” will determine who is to get that benefit, which will probably in the result be divided.

One other benefit arises from the presence of machinery, viz., the avoidance of delay in getting other machinery fixed. It is submitted that we must assume that the tenant adopts the usual course of negotiating with his landlord sufficiently long before he wants to come in, to enable him to procure the necessary machinery.

If so, he will allow for the inevitable delay, and the opportunity of commencing work immediately will not, in ordinary cases at least, induce him to give much (if any) additional rent.

Prime cost of machinery ready fixed, how far material.—

It has been pointed out in the preceding paragraphs that the cost of fixing (or of removing) machinery ready for use, and the delay involved in getting other machinery to replace it, *may* possibly affect the rent. In *Oxford University v. Mayor, etc. of Oxford* (No. 2) (x) it was apparently held by the recorder that the value of the machinery already fixed and ready for use had an important bearing on the amount of rent. Paradoxical as it may appear, it is submitted that the purchase price of the machinery (as distinguished from the cost of fixing or removing) has little or no bearing on the question. Suppose a factory contains 100 new sewing machines ready for use, which can be removed, and for which new machines from a manufacturer next door can be substituted in six hours, without expense. If the tenant has to buy either new machines, or those already fixed, he will not give the landlord a higher rent because the machines cost him (the tenant) 50*l.* each, than he would give if either set of machines cost him only 10*l.* each. The governing factor is not the purchase price, but the saving which the tenant can make, and the delay which he can avoid, by taking the machines already fixed, instead of purchasing other equally valuable machines. In other words, the governing factor, so far as money value is concerned, is not the price which the incoming tenant may pay for the machines already fixed, but the difference between that price and the price which he would have to pay if he bought new machines.

The effect of the rule in the Tyne Boiler Works Case.—In the preceding pages the writer has endeavoured to show that it is extremely difficult satisfactorily to answer the question left undetermined by the Court of Appeal in *Tyne Boiler Works Co. v. Longbenton* (y), viz., how machinery, which is in itself not rateable, is to be valued as enhancing the rateable value of the hereditament. The decision in *Crockett and Jones v. Northampton Union* (z) shows that the question cannot be answered by adding the value of the machinery to the value of the hereditament, and taking the sum of the two values as the rateable value. In the opinion of the writer the rule laid down by the *Tyne Boiler Works Case* (viz., that machinery (though not rateable) must be “taken into account”) when that rule is rightly understood, in some cases makes no difference to the rateable value, that is to the rent for which the

(x) *Ryde & Konstam's Rat. App.* (1894—1904) 96; *supra*, p. 493.

(y) (1886), 18 Q. B. D. 81; *supra*, p. 485.

(z) (1902), *Ryde & Konstam's Rat. App.* (1894—1904) 269; 18 T. L. R. 451; *supra*, p. 489.

hereditament might be expected to let ; in most cases, makes very little difference ; and in nearly every case makes far less difference than has been credited to it in decisions given by justices in quarter sessions who thought they were following the *Tyne Boiler Works Case*.

Cases as to fixtures, as between landlord and tenant.—In dealing with the question whether machinery is rateable or not, reference is sometimes made to the class of cases in which the question has been whether machinery, or other articles, annexed (more or less securely) to the freehold are distrainable for rent, or are “tenant’s fixtures” which the tenant can remove during his tenancy. These questions are not identical (*a*), and fixtures may be removable by the tenant, though not liable to distress. As it has been held (*b*) that the question of rateability does not depend upon “whether the machinery be real or personal property, so as to be liable to distress or seizure under a *fieri facias*, or whether it would descend to the heir or executor, or belong (at the expiration of a lease) to landlord or tenant,” it may be sufficient to deal shortly with the cases relating to the relative rights of landlord and tenant.

The general rule is that everything substantially and permanently affixed to the soil is a fixture, and becomes part of the freehold (*c*) ; but exceptions to this rule were made in favour of the tenant, in respect of fixtures erected by him for the purposes of his trade, and (in certain cases) for the purposes of ornament or convenience (*d*). Fixtures which come within the category of “tenant’s fixtures,” are removable by the tenant during his term (or during what may, for this purpose, be considered as “an excrescence on the term”), but not afterwards (*e*). It is sometimes said that “tenant’s fixtures” until they are severed are part of the freehold (*f*), and, if this be true as a general proposition without any qualification, it seems clear that “tenant’s fixtures” must form part of the rateable hereditament to be valued for the purposes of rating. But it must be noticed that “tenant’s fixtures” may be seized by the sheriff under a writ of *fieri facias* for the benefit of an execution creditor of the tenant (*g*). It is generally said that “tenant’s fixtures” are exempt from liability to distress, but the authorities cited for this proposition, and the reasons given

(*a*) *Vide per* WIGHTMAN, J. : *Darby v. Harris* (1841), 1 Q. B. 895, at p. 899.

(*b*) *R. v. Guest* (1838), 7 A. & E. 951 ; *supra*, p. 477 ; *R. v. Southampton Dock Co.* (1851), 14 Q. B. 587 ; 20 L. J. M. C. 155 ; *supra*, p. 478.

(*c*) *Minshall v. Lloyd* (1837), 2 M. & W. 450, at p. 459.

(*d*) *Elwes v. Mawe* (1803), 3 East, 28 ; Smith’s Leading Cases, Vol. II., 10th ed., p. 183.

(*e*) *Mackintosh v. Trotter* (1838), 3 M. & W. 184 ; *Minshall v. Lloyd* (1837), 2 M. & W. 450.

(*f*) See *Lee v. Risdon* (1816), 7 Taunt. 188 ; *Mackintosh v. Trotter*, *ubi supra*.

(*g*) *Minshall v. Lloyd*, *ubi supra*.

seem to show only that the exemption extends to those tenant's fixtures, which, if distrained, cannot be restored in the same plight in which they were before the distress (*h*). Whether the exemption extends further may be doubted.

It may, perhaps, be said that things which are removable by a tenant, because they are tenant's or trade fixtures, and for no other reason, must necessarily form part of the rateable hereditament. For *ex hypothesi* the things are not mere chattels; and it is only because they would, under the general rule of law, form part of the freehold, and so pass to the landlord, although erected by the tenant, that the tenant is obliged to pray in aid the exceptional principle engrafted on that rule in favour of tenant's fixtures, or trade fixtures. When a tenant "brings any chattel to be used in his trade, and annexes it to the ground, it becomes a part of the freehold, but with a power as between himself and his landlord of bringing it back to the state of a chattel again by severing it from the soil. As the personal character of the chattel ceases when it is fixed to the freehold, it can never be revived as long as it continues so annexed" (*i*).

Cotton-spinning machines not part of the freehold.—In *Hellawell v. Eastwood* (*k*), it was held that "mules" used for spinning cotton, and fixed by screws (some let into the wooden floor, and some sunk into holes in the stone flooring, and secured by molten lead), were distrainable. The court held that these "mules," though in a sense fixed to the freehold, were not part of it: and PARKE, B., said (*l*):

"The question is whether the machines when fixed were parcel of the freehold; and this is a question of fact, depending on the circumstances of each case, and principally on two considerations: first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them, whether it can be easily removed *integre salve et commodè*, or not, without injury to itself or the fabric of the building; secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causâ*, or in that of the year book, *pour un profit del inheritance*, or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel.

(*h*) *Darby v. Harris* (1841), 1 Q. B. 895; *Hellawell v. Eastwood* (1851), 6 Ex. 295. In both these cases it was unnecessary to consider whether the things distrained could be restored in the same plight, if the mere fact of annexation to the freehold exempted them from liability to distress. In *Mather v. Fraser* (1856), 25 L. J. Ch. 361, at p. 364, WOOD, V.-C., seems even to suggest that everything which is removable by the tenant is liable to distress. It is submitted that as a general proposition this is untenable.

(*i*) *Bain v. Brand* (1876), 1 App. Cas. 762, at p. 772. See also *Hobson v. Gorringe*, [1897] 1 Ch. 182, at pp. 191, 192; these cases are, perhaps, not consistent with *Cumberland Union Banking Co. v. Maryport Hematite Iron Co.*, [1892] 1 Ch. 415, at p. 426.

(*k*) (1851), 6 Ex. 295.

(*l*) 6 Ex., at p. 312.

"Now in considering this case we cannot doubt that the machines never became a part of the freehold. They were attached slightly, so as to be capable of removal without the least injury to the fabric of the building or to themselves; and the object and purpose of the annexation was, not to improve the inheritance, but merely to render the machines steadier and more capable of convenient use as chattels. They were never a part of the freehold, any more than a carpet would be which is attached to the floor by nails for the purpose of keeping it stretched out, or curtains, looking-glasses, pictures, and other matters of an ornamental nature, which have been slightly attached to the walls of the dwelling as furniture, and which is probably the reason why they and similar articles have been held in different cases to be removable. The machines would have passed to the executor. They would not have passed by a conveyance or demise of the mill. They never ceased to have the character of movable chattels" (m).

If the question what is, or is not, part of the freehold has a bearing on the question what is to be included in the valuation of the rateable hereditament, this decision is important. It is plain that the machines to which it related were very similar to those which in *R. v. Halstead* (n), were held to be not rateable, and to those which in *Gifford, Fox & Co. v. Chard* (o), were held to be rightly taken into account in ascertaining the rateable value of the hereditament on which they were placed. It must, however, be noticed that although the principle laid down in *Hellawell v. Eastwood* (p) was apparently approved by BLACKBURN, J., in *R. v. Lee* (q), the same judge in delivering the considered judgment of the court in *Holland v. Hodgson* (r), while accepting *Hellawell v. Eastwood* as stating the true principles, questioned whether they were in that case correctly applied to the facts. This view seems to be confirmed by *Reynolds v. Ashby & Son* (s).

Cases as to fixtures, as between mortgagor and mortgagee.

—The peculiar law relating to fixtures, as between landlord and tenant, has no application as between mortgagor and mortgagee, or as between heir-at-law and executor (t), and things which a

(m) In *Loughbottom v. Berry* (1869), L. R. 5 Q. B. 123, at p. 138, HANNEN, J., said: "It is difficult to conceive that a machine which at all times requires to be firmly fixed to the freehold for the purpose of being worked, could truly be said never to lose its character as a movable chattel." In *Turner v. Cameron* (1870), L. R. 5 Q. B. 306, it was held that the rails and sleepers of a railway, by reason of their annexation to the freehold were fixtures and had lost the character of personal chattels, and were therefore not distrainable. This decision agrees with *Great Western Rail. Co. v. Melksham* (1870), 34 J. P. 692; *supra*, p. 192.

(n) (1867), 32 J. P. 118; *supra*, p. 482.

(o) (1890), 6 T. L. R. 431; *supra*, p. 487.

(p) (1851), 2 Ex. 295.

(q) (1866), L. R. 1 Q. B. 241; *supra*, p. 481.

(r) (1872), L. R. 7 C. P. 328, at p. 357; *infra*, p. 505. That case, however, raised a question between mortgagor and mortgagee, not between landlord and tenant.

(s) [1903] 1 K. B. 87, at pp. 90, 100; *infra*, pp. 507, 508.

(t) *Clivie v. Wood* (1869), L. R. 4. Ex. 328, at p. 330; *Loughbottom v. Berry* (1869), L. R. 5 Q. B. 123, at p. 136; *Walmesley v. Milne* (1859), 7 C. B. (N.S.) 115, at p. 133; *Mather v. Fraser* (1856), 25 L. J. Ch. 361; *Fisher v. Dixon* (1846), 12 Cl. & F. 312; *Reynolds v. Ashby & Son*, [1903] 1 K. B. 87.

tenant may have a right to remove, as against his landlord, may yet pass under a mortgage as part of the freehold, to the mortgagee, or to the heir-at-law as against the executor. It seems clear that anything which is so far part of the freehold that it would pass under a mortgage to the mortgagee, or would belong to the heir-at-law as against the executor must necessarily, and *a fortiori*, form part of the rateable hereditament for the purposes of rating. But the decision in *Tyne Boiler Works Co. v. Longbenton* (u), shows that things which would not so pass to the mortgagee, or to the heir, may yet have to be taken into account for the purposes of rating (v). So that cases decided *in favour of* a mortgagee, or of an heir, are conclusive to create rateability; while cases decided *against* a mortgagee or an heir-at-law, are not conclusive to show that the things in question must be left out of consideration for the purposes of rating.

It is clear that trade fixtures, affixed to mortgaged freehold premises, even after the date of the mortgage, pass to the mortgagee (y). The difficulty, however, consists not in stating the general rule, but in determining whether particular things come within it. In *Mather v. Fraser* (z), it was held that machinery "fixed, though only in a *quasi* permanent manner, by screws or soldered with lead, to the soil" would pass under a mortgage; but that "cisterns, and other parts of the machinery, supported merely by their own weight, and not fixed to the ground" would not pass (a). In *Walmsley v. Milne* (b), the machines in question (a hay-cutter, malt mill, and grinding-stones) were annexed to buildings with screws and nuts, but were capable of being removed without injury to the premises or to themselves. It was held (*dubitante*, WILLES, J.) that as the owner of the inheritance had "annexed the fixtures in question for a permanent purpose, and for the better enjoyment of the estate, he thereby made them part of the freehold," and they passed under a mortgage of it. In *Climie v. Wood* (c), it was held that a steam-engine screwed down to planks lying on the ground, and a boiler fixed in brickwork, passed under a mortgage of the land; and that it was immaterial

(u) (1886), 18 Q. B. D. 81; Ryde's Rat. App. (1886—1890), 241; *supra*, p. 485; see also *R. v. Guest* (1838), 7 A. & E. 951; *supra*, p. 477; but note that that case was decided before the passing of the Poor Rate Exemption Act, 1840: *vide supra*, p. 474.

(x) The question how things not in themselves rateable can be taken into account, is considered *supra*, pp. 495—499.

(y) *Mather v. Fraser* (1856), 25 L. J. Ch. 361; *Walmsley v. Milne* (1859), 7 C. B. (N.S.) 115; *Cullwick v. Swindell* (1866), L. R. 3 Eq. 249; *Longbottom v. Berry* (1869), L. R. 5 Q. B. 123.

(z) (1856), 23 L. J. Ch. 361.

(a) Compare (as to the cisterns) *Chidley v. West Ham* (1874), 32 L. T. 486; *supra*, p. 483; and *Reynolds v. Ashby & Son*, [1903] 1 K. B. 87, at pp. 100, 101; *infra*, p. 508.

(b) (1859), 7 C. B. (N.S.) 115; 29 L. J. C. P. 97.

(c) (1869), L. R. 4 Ex. 328, affirming L. R. 3 Ex. 257.

that the jury had found (1) that they were trade fixtures, and fixed for the better use of them, and not to improve the inheritance ; and (2) that they were removable without any appreciable damage to the freehold.

Looms in a cloth-mill.—In *Longbottom v. Berry* (*d*), machinery was erected by a cloth manufacturer and cloth finisher for the purpose of his business, and it was held that all which was fixed to the floors, ceilings, or sides of the buildings, by screws or bolts, or soldered with lead, passed under a mortgage : and that it made no difference that the object of the fixing was to insure steadiness, and to keep the machines in their places when worked ; nor that the machines were trade fixtures, which, as between landlord and tenant would belong to the latter. HANNEN, J., said (*e*) :

“ If the effect of this fixing is to cause the whole set of machines to be effectually used in the manufacture of wool and cloth, it seems very difficult to avoid coming to the conclusion that a necessary consequence is to cause the mill to be put to a more profitable use as a wool-mill than it otherwise would be ; it is also equally difficult to conceive that a machine, which at all times requires to be firmly fixed to the freehold, for the purpose of being worked, could truly be said never to lose its character as a movable chattel” (*f*).

It will be noticed that this case comes very near being in conflict with the decision in *Hellawell v. Eastwood* (*g*), from which it was distinguished on the ground that *Hellawell v. Eastwood* dealt with the rights of landlord and tenant, while *Longbottom v. Berry* related to rights as between mortgagor and mortgagee, although the machinery in both cases was of the same character and fixed in the same manner. In substance, though not in form, an appeal against the decision in *Longbottom v. Berry* was brought in *Holland v. Hodgson* (*h*), in which the question was raised whether looms in a worsted-mill passed under a mortgage of the mill. The looms were worked by steam power, by means of bands connecting them with steam-engines and shafting which were unquestionably fixtures. The looms varied in size, but each was about seven feet long, three feet wide, and from three to four feet high, and weighed about seven or eight hundredweight. The looms were attached to the floors of the mill by means of nails driven through holes in the feet of the looms ; and it was essential to the working of a loom that it should be so attached, and kept

(*d*) (1869), L. R. 5 Q. B. 123. In the case will be found a full description of the machines, standing merely by their own weight, or used merely as loose chattels, which were held to be exceptions to the rule adopted by the court and not to be included in the mortgage.

(*e*) L. R. 5 Q. B., at p. 138.

(*f*) Contrast with this case *Lyon v. London City and Midland Bank*, [1903] 2 K. B. 135 ; *infra*, p. 508.

(*g*) (1851), 6 Ex. 295 ; *supra*, p. 502.

(*h*) (1872), L. R. 7 C. P. 328.

steadily and in a true direction, perpendicular to the line of shafting. The looms could not be removed without drawing the nails, but this could easily be done without any serious injury to the floors. The Exchequer chamber held that the looms must be regarded as part of the land (*i*), and passed under a mortgage of it. BLACKBURN, J., said (*k*) :

"The general maxim of the law is that what is annexed to the land becomes part of the land : but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation (*l*). When the article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel : see *Wiltshire v. Cottrell* (*m*), and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land they do become part of the land: see *D'Eyncourt v. Gregory* (*n*). Thus blocks of stone placed one on the top of another without any mortar or cement, for the purpose of forming a dry stone wall, would become part of the land, though the same stones, if deposited in a builder's yard, and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels. On the other hand, an article may be very firmly fixed to the land, and yet the circumstances may be such as to show that it was never intended to be part of the land, and then it does not become part of the land. The anchor of a large ship must be very firmly fixed in the ground, in order to bear the strain of the cable, yet no one could suppose that it became part of the land, even though it should chance that the ship-owner was also the owner of the fee of the spot where the anchor was dropped. An anchor similarly fixed in the soil for the purpose of bearing the strain of the chain of a suspension bridge would be part of the land. Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of showing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel."

(*i*) If part of the land, they must have been rateable, and therefore the case is hardly reconcilable with *R. v. Halstead* (1867), 32 J. P. 118 ; *supra*, p. 482. It is curious that BLACKBURN, J., who delivered the judgment in *Holland v. Hodgson*, takes no notice of the decision in *R. v. Halstead*, to which he was himself a party.

(*k*) L. R. 7 C. P. at pp. 334, 335.

(*l*) As to the meaning of this sentence, see *In re De Fulbe*, [1901] 1 Ch. 523, at p. 535 ; *infra*, p. 509 ; *Hobson v. Gorringe*, [1897] 1 Ch. 182, at p. 193 ; *infra*, p. 507 ; *Reynolds v. Ashby & Son*, [1903] 1 K. B. 87 ; *infra*, pp. 507, 508.

(*m*) (1853), 1 E. & B. 674. In that case it was held that a threshing-machine attached by bolts and screws to pillars fixed in the land passed under a conveyance, but that a granary resting by its mere weight on staddles built into the land was a chattel and did not pass.

(*n*) (1866), L. R. 3 Eq. 382. This case has since been doubted ; *vide infra*, p. 509.

Object and intention of annexation.—The rule laid down in *Holland v. Hodgson* (o), that two circumstances as indicating the intention—viz., the degree of annexation and the object of annexation—must be looked at to determine whether a thing has become part of the freehold, has been specially examined in some recent cases. In *In re De Falbe* (p), which was affirmed by the House of Lords (q), it was held that ornamental tapestries fixed to the walls of a dwelling-house belonged to the representatives of the tenant for life as against the remainderman. The tapestries were stretched on canvas fastened to strips of wood nailed to the walls. VAUGHAN WILLIAMS, L.J., said (r) : “In dealing with the question of fixtures it sometimes becomes material to consider the object and purpose of the annexation, by which I do not mean that there must be an inquiry into the motive of the person who annexed them, but a consideration of the object and purpose of the annexation as it is to be inferred from the circumstances of the case.” It was held that the object of the annexation was the enjoyment of the tapestries as chattels, and not the improvement of the freehold. In *Hobson v. Gorringe* (s) it was held that a gas engine held under a hire-purchase agreement passed under a mortgage. The engine was fastened by bolts and nuts to iron plates embedded in concrete, and it was held that it had become part of the land. With reference to the object of the annexation, and the rule laid down in *Holland v. Hodgson* (t), A. L. SMITH, L.J., said (u) : “Lord BLACKBURN, when dealing with the ‘circumstances to show intention,’ was contemplating and referring to circumstances which showed the degree of annexation and the object of such annexation, which were patent for all to see, and not to the circumstances of a chance agreement that might or might not exist between an owner of a chattel and a hirer thereof.” Consequently it was held that the engine passed under a mortgage created before the engine was hired and fixed on the mortgaged premises, although the mortgagor never paid all the instalments under the hire-purchase agreement, by the terms of which until all the instalments were paid the property in the gas engine should not pass to the hirer (v). In *Reynolds v. Ashby & Son* (y) it was held by the Court of Appeal that machines supplied under a

(o) (1872), L. R. 7 C. P. 328, at p. 334 ; *supra*, pp. 505, 506.

(p) [1901] 1 Ch. 523.

(q) Reported as *Leigh v. Taylor*, [1902] A. C. 157.

(r) [1901] 1 Ch., at p. 535.

(t) (1872), L. R. 7 C. P. 328 ; *supra*, p. 506.

(s) [1897] 1 Ch. 182.

(u) [1897] 1 Ch., at p. 193.

(v) This case, so far as it decided that the mortgagor could give the mortgagee a better title than he possessed himself, seems to overrule *Cumberland Union Banking Co. v. Maryport Hematite Iron Co.*, [1892] 1 Ch. 415. But see also *Gough v. Wood & Co.*, [1894] 1 Q. B. 713 ; *Sanders v. Davis* (1885), 15 Q. B. D. 218.

(y) [1903] 1 K. B. 87. It is understood that an appeal to the House of Lords is pending.

hire-purchase agreement, and fixed in a factory by means of nuts and screws, formed part of the freehold and passed under a mortgage. The machinery consisted of heavy carpenter's apparatus, such as lathes, planes, saws and tools driven by steam-power. The machines were screwed by means of nuts to bolts embedded in concrete blocks let into the floor of the building. It was shown that such machines could be, and often were, used without being fixed, but it was better to have them steadied by being so fixed, in order to avoid vibration and to prevent the machine from shifting its position. COLLINS, M.R., decided, mainly on the authority of *Holland v. Hodyson* (z), that attachment to the freehold gave rise to a presumption that the article in question was part of the freehold, and that there was nothing to rebut that presumption, because the hire-purchase agreement could not constitute an element in determining the intention with which the article was annexed to the freehold.

It will be noticed that the machinery dealt with in *Reynolds v. Ashby & Son* (a) was fixed in a manner very similar to that dealt with in *R. v. Halstead* (b), in which the machines were held to be not rateable. If *Reynolds v. Ashby & Son*, which dealt with the rights of a mortgagee, is an authority on rating law, the cases seem inconsistent with each other. In *Reynolds v. Ashby & Son* (c) the decision in *Chidley v. West Ham* (d) appears to have been doubted; and, though the principle laid down in *Hellawell v. Eastwood* (e) was accepted as correct, the application of that principle to the facts of that particular case was questioned.

In *Lyon v. London City and Midland Bank* (f) it was held that fixed seats in the Brighton Hippodrome, held under a hire-purchase agreement, did not pass under a mortgage. The seats were hung on pivots, supported by iron standards, screwed by four screws to the floor, which consisted of boards lying on concrete, to which they were fastened by four-inch nails, driven into the concrete before it hardened. The grounds of the decision were that the seats were complete in themselves, and could be used without being fastened; and that the annexation was merely for a temporary purpose and for the more complete enjoyment and use of the chattel as a chattel.

Loose parts of fixed machinery.—In *Ex parte Astbury, In re Richards* (g), questions were raised, as between mortgagor and mortgagee, whether the following articles passed under a mortgage of ironmaster's premises: viz. (1) a large number of duplicate

(z) (1872), L. R. 7 C. P. 328, *supra*, pp. 505, 506.

(a) [1903] 1 K. B. 87.

(b) (1867), 32 J. P. 118; *supra*, p. 482.

(c) [1903] 1 K. B. 87, at pp. 100, 101.

(d) (1874), 32 L. T. 486; *supra*, p. 483.

(f) [1903] 2 K. B. 135.

(e) (1851), 6 Ex. 295; *supra*, p. 502.

(g) (1869), L. R. 4 Ch. 630.

iron rolls of various sizes made to be fitted into a rolling machine (which was itself admittedly a fixture) : of these rolls, some had been fitted to the machine, and had been used, and others had not yet been fitted : (2) straightening plates, which were broad iron plates embedded in the earth : (3) weighing-machines which were placed in holes dug in the earth and lined with brickwork, so that the weighing plate was level with the surface of the ground, but which were not fixed to the brickwork. It was held, as to the duplicate rolls (*h*), that such of them as had been fitted to the machine were part of it (*i*), but not such as had not been fitted, and required something more to be done to them before they could be used : that the straightening plates were fixtures and passed under the mortgage, but that the weighing-machines did not pass (*k*). But the decision as to the weighing-machines must be compared with *R. v. Brinjes* (*l*), in which a question was raised as to the rateability of certain cylinders and coolers used as essential parts of a charcoal burning apparatus ; of which the former were easily removable, and the latter rested merely by their own weight. It was held that those parts of the machinery which, though not themselves fixed, were essential to the working of the fixed machinery, must be treated as fixed ; and (if the premises were demised) would pass as part of the things demised, and as such were rateable.

Fixtures in a dwelling-house.—In *D'Eyncourt v. Gregory* (*m*) it was held that tapestry, pictures in panels, frames filled with satin and attached to the walls, and statues, marble vases, and stone garden seats were part of a house, and passed under a settlement of it ; but that chimney-glasses and pictures, though attached to the wall, did not pass. This decision was followed, as to the tapestries, in *Norton v. Dashwood* (*n*), in which case the tapestries had been specially cut to fit the walls. But considerable doubt was thrown upon *D'Eyncourt v. Gregory*, and *Norton v. Dashwood* was distinguished by the Court of Appeal in *In re De Falbe* (*o*), in which tapestries stretched on the walls were held not to be part of the freehold. This decision was affirmed by the

(*h*) It was contended that duplicates (which from their very nature could not be used at the same time in the same machine) could not pass as part of that machine ; but it was held that this contention involved the absurdity of saying that duplicate latch-keys of a door would not pass.

(*i*) Cf. *Sheffield and South Yorkshire Building Society v. Harrison* (1884), 15 Q. B. D. 358, in which it was held that leathern driving belts passed under a mortgage of premises with “engines, plant, machinery, and gear.” That decision and the case cited in the text must also be compared with the decision in *Loughbottom v. Berry* (1869), L. R. 5 Q. B. 123, at p. 139, that certain things (of a very similar character to the rolls and belts) did not pass under a mortgage of a mill.

(*k*) Cf. *R. v. St. Nicholas, Gloucester* (1783), 1 T. R. 723 n ; *supra*, p. 475.

(*l*) (1871), 35 J. P. 456.

(*m*) (1866), L. R. 3 Eq. 382.

(*n*) [1896] 2 Ch. 497.

(*o*) [1901] 1 Ch. 523 ; see pp. 531, 537 ; *vide supra*, p. 507.

House of Lords in *Leigh v. Taylor* (*p*), without, however, saying that any of the previous decisions were wrongly decided. The House of Lords were of opinion that there had been a change, not in the law, but in the habits and modes of life. Lord SHAND said (*q*) : "The law has been developed in the direction of holding what would at one time have been held to be parts of a building to be now temporary fixtures only, removable by the person who attached them to the building, or his personal representative, and I think that this later view should be maintained."

In *Viscount Hill v. Bullock* (*r*) it was held that a collection of stuffed birds, put in fixed cases made specially to contain them, were mere personal chattels, though the cases were held to be part of the house in which they were fixed.

In *Monti v. Barnes* (*s*) it was held that fitted furniture (wardrobes, mirrors, and the like) fixed in and specially made to fit the room in which they were placed, and also movable dog-grates (which were not fixed at all, and could be removed without injury to the freehold) formed part of the freehold so as to pass under a mortgage.

(*p*) [1902] A. C. 157.

(*q*) [1902] A. C., at p. 162.

(*r*) [1897] 2 Ch. 55, 482.

(*s*) (1900), 16 T. L. R. 206.

PART IV.

PRACTICE AND PROCEDURE.

CHAPTER XXVI.

INTRODUCTION TO THE PRACTICE.

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General summary of the statutes relating to the practice.—

The Act of Elizabeth (*a*) gave to the overseers the power of making the rate, and of determining the amount at which each person was to be rated, and (by s. 5) gave a right of appeal to quarter sessions against the rate. The Poor Relief Act, 1743 (*b*), limited the right of appeal to the *next* quarter sessions, and gave the sessions power to amend the rate instead of quashing it *in toto*. The Poor Rate Act, 1801 (*c*), gave additional power to amend the rate by enabling the sessions to alter the assessment of persons other than the appellant. The Parochial Assessments Act, 1836 (*d*), gave a new and alternative form of appeal to the justices in petty sessions, with an appeal therefrom to quarter sessions : but the right of appeal given by this Act was limited to appeals on questions of value only, *i.e.*, on the ground of over-assessment of the appellant, or under-assessment of other persons.

So far each successive rate was, or might be, a new estimate of the several ratepayers' liabilities, different from the preceding rate. But the Union Assessment Committee Act, 1862 (*e*), which applies with but a few exceptions (*f*) to the whole of England

(*a*) 43 Eliz. c. 2. This and the other Acts here referred to are set out in Appendix II.

(*b*) 17 Geo. 2, c. 38, ss. 4, 6.

(*c*) 41 Geo. 3, c. 23, s. 1.

(*d*) 6 & 7 Will. 4, c. 96, ss. 6, 7.

(*e*) 25 & 26 Vict. c. 103. The Union Assessment Acts are set out in Appendix II. In the following notes these Acts have been cited by initials, thus: "U. A. C. Act, 1862," "U. A. C. A. Act, 1864," etc., in order to save space.

(*f*) The following places (and possibly some others) are exceptions which are governed by local Acts, *viz.*, the parishes of Alverstoke, Birmingham, and East Stonehouse, and the township of Manchester and the "incorporations" of Plymouth and

and Wales, including the metropolis, introduced a new machinery for settling the value of the several hereditaments to be rated. It created a new authority, the assessment committee, appointed by the guardians of the union; and it directed the overseers of each parish in the union to prepare a valuation list for their parish, which list (after it had been revised, corrected, and approved by the assessment committee) was to determine (as long as it remained in force) the values of the several hereditaments to be included in the rate. The Union Assessment Committee Amendment Act, 1864 (*g*), added a new condition precedent, which must be complied with before appealing against a rate: the appellant must first have given to the assessment committee notice of his objection to the valuation list on which the rate is based, and must have failed to obtain relief. The Act also required the appellant to give to the assessment committee notice of his appeal to the sessions, and enabled the committee to appear as respondents to that appeal.

It must be noticed that, after the passing of the two Union Assessment Acts above mentioned, as before, the right of appeal on questions of amount and on all other questions, was to appeal against the rate, not against the valuation list. If the appellant succeeded, and the sessions amended the rate by reducing his assessment, a consequential alteration of the list was to be made by the assessment committee (*h*), but the appeal remained (as before) an appeal against the rate: and this is still the law outside the metropolis. The Union Assessment Acts provided means for revising the valuation list from time to time, but did not prescribe any fixed period for which the list was to remain in force.

The Valuation (Metropolis) Act, 1869 (*i*), introduced a new system for the "metropolis" (*k*). It directed (by s. 46) a compulsory re-valuation in every fifth year, with further machinery for revision in every year in case of "alterations in any of the matters stated in the valuation list": and in the absence of any such "alterations," the list was to remain in force for five years; see s. 43. The Act of 1869 also directed that all appeals on questions of value (*l*) shall be brought—not against the rate—but

Southampton. [These "incorporations" must not be confounded with the municipal corporations of the boroughs last mentioned.] The first report of the Royal Commission on Local Taxation (December 16th, 1898) also mentions the "incorporation" of Kingston-upon-Hull as an exception; but that place is now brought under the Union Assessment Acts, though the local authorities are governed in part by local Acts; see the 28th Annual Report of the Local Government Board (1898—1899), p. xevi.

(*g*) 27 & 28 Vict. c. 39, ss. 1, 2.

(*h*) See U. A. C. Act, 1862, s. 22, in Appendix II.

(*i*) 32 & 33 Vict. c. 67: see Appendix II.

(*k*) As to the meaning of "the metropolis," see the next paragraph.

(*l*) Appeals on other grounds (*e.g.*, exemption, or non-occupation) *may* still be entered against the rate in the metropolis: *vide infra*, p. 646. An appellant may, however, appeal on these grounds against the valuation list, or may wait until the rate is made and appeal against the rate.

against the valuation list itself; and should be brought and decided before, and not after, the valuation list came into force. To carry this into effect the Act of 1869 prescribes times within which the various proceedings are to take place, and it repeals many sections (so far as they relate to the metropolis)—though it incorporates and applies other sections—of the Union Assessment Acts (*m*). The Valuation (Metropolis) Act, 1869 (by ss. 19, 32), gives a right of appeal direct to quarter sessions (*n*), and also an alternative right of appeal (on questions of amount only) to petty sessions, subject to an appeal therefrom to quarter sessions.

The metropolis, as defined for rating purposes.—The term “metropolis” as defined by the Valuation (Metropolis) Act, 1869 (*o*), means “the unions and parishes not in union which are for the time being either wholly or for the greater part in value thereof, respectively situate within the jurisdiction of the Metropolitan Board of Works, appointed under the Metropolis Management Act, 1855.” Under s. 250 of the Act of 1855, the jurisdiction of the Metropolitan Board of Works extended to the “metropolis,” as defined by that Act, *i.e.*, to the city of London and the parishes and places mentioned in Schedules A., B., and C. to that Act. In the Local Government Act, 1888 (*p*), the term “metropolis” receives (in effect) the same definition, and by s. 40 (1) of that Act, the “metropolis” is made an administrative county by the name of “the administrative county of London”; and by s. 40 (8), the London County Council are made in law the successors of the Metropolitan Board of Works (*q*). Down to the year 1900 the hamlet of Penge was included in the administrative county of London, and under the jurisdiction of the London County Council, but was in the Croydon Union, of which “the greater part in value” was not under the jurisdiction of the London County Council: consequently Penge was not within the “metropolis” as defined by the Valuation (Metropolis) Act, 1869. And by an Order in Council, dated May 15th, 1900, made under s. 20 of the London Government Act, 1899 (*r*), “the hamlet of Penge shall for all purposes cease to form part of the county of London, and shall form part of the county of Kent.” And by another Order in Council, dated May 15th, 1900, made under s. 18 of the London Government Act, 1899, “the whole of the urban district

(*m*) In Appendix II. those sections which are repealed as to the metropolis are printed within brackets.

(*n*) The jurisdiction given to the “assessment sessions” by the Valuation (Metropolis) Act, 1869, is transferred to the London quarter sessions by the Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 42 (10); *infra*, p. 670.

(*o*) 32 & 33 Vict. c. 67, ss. 3, 4: see Appendix II.

(*p*) 51 & 52 Vict. c. 41, s. 100.

(*q*) See also s. 78 of the Local Government Act, 1888.

(*r*) See Appendix II., *infra*.

of South Hornsey [hitherto not included in the county of London] shall be added to, and form for all purposes part of the county of London," and certain detached parts of the parish of South Hornsey are annexed to the parish of St. Mary, Stoke Newington (which was already included in the metropolis). Subject to the foregoing remarks as to Penge and South Hornsey, the "metropolis," as defined by the Valuation (Metropolis) Act, 1869, may be taken as co-extensive with the area under the jurisdiction of the London County Council (s).

The practice how far uniform within and without the metropolis.—Up to a certain point the procedure within and without the metropolis follows the same general scheme. The valuation list is made out in the first instance by the overseers of every parish (t), either within or without the metropolis: it is then transmitted to the assessment committee, who revise the list, hear objections made on behalf of the ratepayers, and finally approve the list. But the Valuation (Metropolis) Act, 1869, while it adopts the general scheme of procedure under the Union Assessment Acts, makes many alterations in detail: thus (1) it prescribes definite times for proceedings where none were prescribed before; (2) it for the first time makes the surveyor of taxes a party to the revision of the valuation list; and (3) it repeals, wholly or in part, various sections of the Union Assessment Acts so far as they relate to the metropolis. Consequently the procedure under the Valuation (Metropolis) Act, 1869, is in part peculiar to the metropolis, in part common to the metropolis and the rest of England. It has been thought that it will be less confusing to the reader to deal with the two forms of procedure separately, and to deal first with the practice under the Union Assessment Acts outside the metropolis.

(s) The city of London is within "the metropolis" as defined by the Valuation Act, 1869, and consequently appeals against valuation lists for parishes within the city are heard before the quarter sessions for the county of London, and not before the recorder and quarter sessions for the city of London.

(t) Save where local Acts are in force: *vide supra*, p. 511. Note further, that in the administrative county of London, exclusive of the city of London, the council of each metropolitan borough acts as the overseers of every parish in their borough: see London Government Act, 1899, ss. 1, 11.

(1) THE PROCEDURE OUTSIDE THE METROPOLIS.

CHAPTER XXVII.

THE MAKING AND REVISION OF VALUATION LISTS.

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The Union Assessment Acts.—In this volume it is proposed to deal with the practice outside the metropolis only so far as relates to parishes which come under the Union Assessment Acts. Those Acts apply to all the parishes in England and Wales with a few important exceptions (*a*), where the practice is regulated by

(*a*) The exceptions are specified in note (*f*), *supra*, p. 511.

local Acts. No attempt has been made to deal with the provisions of those local Acts.

The Union Assessment Committee Acts, 1862 and 1864, which originally applied only to unions, were extended to single parishes not included in any union by virtue of the Union Assessment Act, 1880 (*b*).

Valuation lists of two kinds.—The valuation list of a parish outside the “metropolis” is corrected from time to time (*c*) either by making a new list for the entire parish or by making a supplemental list containing only the particular hereditament or hereditaments, the valuation of which requires to be altered.

A supplemental list (so far as relates to the hereditaments which it contains or ought to contain) is made and revised according to the same procedure as a new valuation list for an entire parish (*d*). It is therefore sufficient to trace the procedure in making a new valuation list. The question when it becomes necessary to make a supplemental list is considered hereafter (*e*). A supplemental list, when made, becomes in effect part of the valuation list (*f*).

Summary of procedure in making and revising valuation lists.—The details of the procedure will be dealt with in the following pages ; but it may be convenient to give first a summary of the various stages through which a valuation list will pass :

1. The list will be made by the overseers (or by some person instead of the overseers) and deposited by them with the rate books of the parish for inspection, and public notice on the church doors will be given of the deposit (*g*).

2. The list will be transmitted to the assessment committee, who will revise it, and (if any notice of objection to the list is given by any person aggrieved) must hold a meeting for hearing such objection. The assessment committee may correct the valuation list and may employ a person to make a valuation (*h*).

3. Where any alterations are made in the list the assessment committee (when they have concluded their revision and heard all objections) must send the list back to the overseers to be re-deposited with the rate books for inspection, and public notice of the re-deposit must be given on the church doors (*i*).

4. The list will be returned to the committee, who must hold further meetings to hear the objections (if any) which are made to

(*b*) In the following pages the Union Assessment Acts are referred to by initials, thus : “U. A. C. Act, 1862,” “U. A. C. A. Act, 1864.”

(*c*) *Outside the metropolis* no definite period is fixed for the making of a new or supplemental list : see ss. 25, 26 of U. A. C. Act, 1862, in Appendix II.

(*d*) See U. A. C. Act, 1862, s. 27.

(*e*) *Vide infra*, p. 534.

(*f*) See U. A. C. Act, 1862, s. 24.

(*g*) *Infra*, pp. 517—521 : see U. A. C. Act, 1862, ss. 14, 17.

(*h*) *Infra*, pp. 521—528 : see U. A. C. Act, 1862, ss. 17—20.

(*i*) *Infra*, p. 529 : see U. A. C. Act, 1862, s. 21.

the list as altered, and, after hearing them, the committee must finally approve the list (*k*).

5. A fair copy of the list as approved will be delivered by the assessment committee to the overseers to be kept by them with the rate books of the parish (*l*).

Overseers.—The first section of the statute 43 Eliz. c. 2 (which is set out in Appendix II.) enacts that the churchwardens and four, three, or two substantial householders, to be nominated yearly by the justices for each parish (*m*) shall be called overseers of the poor. But by s. 5 (2) of the Local Government Act, 1894 (*n*), the churchwardens of every *rural* parish (*i.e.*, of every parish in a rural district) have ceased to be overseers, and an additional number of overseers may be appointed to replace the churchwardens : and the power of appointing overseers in a rural parish having a parish council is given to that council, and in other rural parishes is given to the parish meeting (*o*). And the same Act, by s. 6 (1) enacts that “upon the parish council of a rural parish coming into office, there shall be transferred to that council (*inter alia*) the powers, duties, and liabilities of the overseers, or of the churchwardens and overseers of the parish with respect to appeals or objections by them in respect of the valuation lists, or appeals in respect of the poor rate.” And by s. 19 (10), in a rural parish not having a parish council, the county council, on the application of the parish meeting, “may confer on that meeting any of the powers conferred on a parish council.” Until such an order is made, in a rural parish not having a parish council, there is no transfer of any of the powers, etc., of overseers, relating to valuation lists, or poor rates.

It must be noticed that ss. 5, 6, and 19 of the Local Government Act, 1894, which have just been cited, relate only to *rural* parishes. But by s. 33 (1) of the same Act, “the Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district (*inter alia*) the appointment of overseers and assistant overseers, . . . any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a

(*k*) *Infra*, pp. 530—532 : see U. A. C. Act, 1862, s. 21.

(*l*) *Infra*, p. 532 ; see U. A. C. Act, 1862, s. 23, as amended by s. 30 of the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122).

(*m*) The appointment of overseers for separate townships and villages in large parishes was authorised by 14 Car. 2, c. 12, s. 21, but this subdivision of parishes is restricted by 7 & 8 Vict. c. 101, s. 22. A township for which separate overseers are appointed is, in substance, a separate parish : see the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 18, repealed, and in substance re-enacted, by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), ss. 5, 41.

(*n*) 56 & 57 Vict. c. 73.

(*o*) Local Government Act, 1894, s. 5 (1). and s. 19 (5) ; see Appendix II., *infra*.

parish council, and applying with the necessary modifications the provisions of [the Local Government Act, 1894], with reference thereto." Under this section the Local Government Board have, it is believed, made several orders relating to the boroughs and districts named therein, which contain a clause to the effect that "s. 5 (2) of the Local Government Act, 1894, shall apply" to such boroughs and districts; *i.e.*, that the churchwardens of the parishes therein shall cease to be overseers.

The result of these most inconvenient enactments is as follows: In a borough or other urban district, and in a rural parish not having a parish council, it is necessary to inquire whether any special order has been made, in order to ascertain who are the persons in whom the powers and duties of overseers are for the time being vested. If such an order has been made, the precise terms of the order must be consulted. If no such order has been made, then the powers and duties of overseers in such places remain unaffected by the Local Government Act, 1894, save that in every rural parish the churchwardens are no longer overseers. In a rural parish having a parish council, the Local Government Act, 1894, does not transfer to the parish council *all* powers, etc., of overseers: it leaves them as before, the authority having the power to make and collect the poor rate, and to make out the valuation list on which the rate is based. And while it transfers to the parish council the powers, etc., of overseers "with respect to appeals or objections *by them* in respect of the valuation list," it makes no transfer of their powers, etc., with respect to appeals or objections *by other persons* in respect of the valuation list. On the other hand, it transfers to the parish council, the powers, etc., of overseers "with respect to appeals in respect of the poor rate," including appeals by the overseers, by individual ratepayers, and by any other persons. In the case of an ordinary appeal by a ratepayer against a poor rate, it is not easy to fix the precise stage in the proceedings at which the parish council under the Act of 1894 take the place of the overseers (*p*).

Assessment committee.—The guardians of every union annually appoint the assessment committee, consisting of not less than six nor more than twelve, from among their own number: and where the union has the same bounds as a municipal borough, additional members of the committee *may* be appointed by the borough council (*q*).

Order for making a new list.—The assessment committee may, from time to time (*r*) where they see fit, upon the application of any person aggrieved by the list in force in any parish, or where

(*p*) *Infra*, pp. 525, 562, 577. (*q*) U. A. C. Act, 1862, ss. 2, 3, in Appendix II., *infra*.

(*r*) No special time is prescribed outside the metropolis.

they themselves think it expedient, direct a new valuation list [for the whole parish] or a supplemental list for any part of the parish, to be made by the overseers; or the committee may, with the consent of the guardians, appoint a person to make such a list (*s*). Apparently the consent of the guardians is not required to the selection of the person to be appointed, or to the amount of his remuneration, though consent may be refused if information on these points be not given. If the list is made by a person appointed by the committee, the expenses may be charged either on the poor rate of the parish or on the common fund of the union (*t*). Where the committee order a valuation of all the hereditaments in a parish, the guardians may borrow money for the expenses (*u*). If the list is made by the overseers, the expenses, with the consent of the vestry (*x*), and if no meeting be held, or no decision arrived at, then to the extent which the assessment committee shall allow, may be charged upon the poor rate (*y*). It has been held that the consent of the vestry need not be given *before* the expenses are incurred, and that (if it is given) the auditor cannot disallow the payment (*z*). But the section above referred to (*a*) adds a proviso that "as regards the valuation of the property no expense shall be so charged upon the poor rate unless the consent of such committee to the procuring of such valuation by the overseers shall have been given previously to the same being made." This proviso seems to distinguish expenses of making a valuation from other expenses (*e.g.*, expenses of copying the list); and as to expenses of valuation, it seems to render the previous consent of the assessment committee necessary, whether the consent of the vestry (*b*) is obtained or not. It seems to be implied that the overseers have power (provided the necessary consents are obtained) to employ a valuer (*c*). It has been held that a vestry clerk appointed under the Vestries Act, 1850 (13 & 14 Viet. c. 57), is entitled to special remuneration for making out a valuation list, that work not being covered by his salary under s. 7 of that Act (*d*).

(*s*) U. A. C. Act, 1862, s. 26; and as to the mode of obtaining the consent, see s. 16. In *Smith v. Leigh Union* (1904), Ryde & Konstan's Rat. App. (1894—1904), 339, the Court of Appeal held, with reference to similar provisions in s. 2 of U. A. C. A. Act, 1864, that s. 12 of the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Viet. c. 58), does not apply, and, therefore, that the *fourteen days' notice* to each guardian prescribed by that section need not be given.

(*t*) U. A. C. Act, 1862, s. 39.

(*u*) U. A. C. A. Act, 1864, s. 8: see also the Parochial Assessments Act, 1836, s. 3.

(*x*) The parish council (where there is one) is substituted for the vestry under s. 6 (1) (a) of the Local Government Act, 1894; see Appendix II., *infra*.

(*y*) U. A. C. A. Act, 1864, s. 7.

(*z*) *R. v. Chorlton-upon-Medlock* (1875), 1 Q. B. D. 62.

(*a*) U. A. C. A. Act, 1864, s. 7: see Appendix II., *infra*.

(*b*) Or parish council, as the case may be.

(*c*) It is more usual for the valuer to be appointed by the assessment committee under U. A. C. Act, 1862, s. 26.

(*d*) *R. v. Cumberlege* (1877), 2 Q. B. D. 366.

Making and deposit of valuation list.—All rateable hereditaments in the parish must be included in the valuation list, even though for the time being they are not actually rated; so that empty houses, if ready for occupation, must be inserted (*e*). But property which is not, and cannot be rated (as, for example, property in the occupation of the Crown (*f*)), must be omitted. Where the Crown pay a voluntary contribution in aid of rates, a special entry must be made in the valuation list for the purpose of calculating the contribution of the parish to the common fund of the union (*g*).

The Union Assessment Committee Act, 1862, s. 36, contains a saving for total or partial exemptions (*h*), and consequently it appears to be intended that where property is partially exempt, the true gross and rateable values should not be inserted in the list, but only such reduced amounts as will give effect to the partial exemption; otherwise the contribution of the parish to the common fund of the union will not be calculated upon the true and effective total value of the parish (*i*).

The partial exemption given to "agricultural land" by the Agricultural Rates Act, 1896 (*k*), is carried out by levying half the rate on the full rateable value, which must consequently be stated in the list.

The valuation list must be in the form (*l*) contained in Sched. W. to the Agricultural Rates Order, 1896, which was made by the Local Government Board under s. 6 (3) of the Agricultural Rates Act, 1896.

We have already considered (*m*) the question when it becomes necessary that property which is occupied by one and the same person, but the parts of which are capable of being separately occupied, should be entered in the valuation list as one hereditament, or as many.

The list when made is to be signed by the overseers (*n*), or by the person appointed by the committee to make it, as the case may be (*o*), and is to be deposited by the overseers in the place in the parish in which rate books are deposited or kept; and a copy of the list is to be forthwith delivered to the guardians. Public notice of the deposit must be given on the Sunday next following

(*e*) U. A. C. Act, 1862, ss. 14, 27; *R. v. Malden* (1869), L. R. 4 Q. B. 326.

(*f*) *Vide supra*, pp. 88 *et seq.*

(*g*) U. A. C. Act, 1862, s. 30.

(*h*) Instances of property partially exempt by statute will be found *supra*, pp. 103—126.

(*i*) But see, however, *R. v. Foundling Hospital* (1871), L. R. 7 Q. B. 83. *infra*, p. 632, in which a contrary conclusion was arrived at in dealing with the corresponding provisions of the Valuation (Metropolis) Act, 1869, which Act repeals s. 36 of the Union Assessment Committee Act, 1862, *as to the metropolis*.

(*k*) Set out in Appendix II., *infra*.

(*l*) Set out in Appendix II., *infra*.

(*m*) *Vide supra*, pp. 56—59.

(*n*) U. A. C. Act, 1862, s. 14.

(*o*) *Ibid.*, ss. 16, 26.

the deposit in the same manner as a poor rate is published (*p*) : that is to say, the notice must be reduced to writing, and copies thereof, either in writing or in print, or partly in writing and partly in print, must previously to the commencement of divine service, either in the morning or the evening, be affixed on or near to the principal door of all the churches and chapels of the Established Church within the parish within which divine service is performed (*q*). The notice must be published at all such churches and chapels (*r*), but it is not necessary that it should be published at every door of such church or chapel (*s*) ; nor is it necessary that it should be affixed to the doors of the chapels of nonconformists, or of schools in which divine service is performed by a clergyman of the Established Church (*t*). Special provision has been made for a parish in which there is no church or chapel (*u*).

Inspection of valuation list.—As soon as the list is deposited every person assessed or liable to be assessed in the parish has the same right of inspecting and taking copies of, or extracts from, the list as in the case of a poor rate (*x*). By the Poor Rate Act, 1743 (*y*), the overseers must permit every inhabitant of the parish to inspect the rate at all reasonable times on payment of 1*s.*, and must upon demand [make and] give copies of the rate or any part thereof on payment at the rate of 6*d.* for every twenty-four names. And by the Parochial Assessments Act, 1836, s. 5 (*z*), any person rated may, at all reasonable times, *take* copies of or extracts from the rate [*i.e.*, copies of his own making] without paying anything for the same. The section renders the earlier enactment in great measure obsolete.

Transmission of the list to assessment committee.—At the expiration of fourteen days from the time of the notice given of the deposit (this is, from the Sunday on which the notice appears on the church doors) the overseers must transmit the list to the assessment committee (*a*). They should be careful not to send it to the assessment committee *before* the expiration of fourteen days, as such an irregularity would, perhaps, render the list invalid, on

(*p*) U. A. C. Act, 1862, ss. 17, 27.

(*q*) 17 Geo. 2, c. 3, s. 1 ; 7 Will. 4 & 1 Vict. c. 45, s. 2 ; as explained by *Ormerod v. Chadwick* (1847), 16 M. & W. 367 ; *Burneley v. Overseers of Methley* (1859), 28 L. J. M. C. 152.

(*r*) *R. v. Whipp* (1843), 4 Q. B. 141.

(*s*) *R. v. Marriott* (1840), 12 A. & E. 779, at p. 780, note (*b*) ; *Ormerod v. Chadwick* (1847), 16 M. & W. 367, at pp. 375, 379.

(*t*) *Ormerod v. Chadwick* (1847), 16 M. & W. 367, at pp. 378, 380.

(*u*) See the Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882 (45 & 46 Vict. c. 20), s. 4, in Appendix II., *infra*.

(*v*) U. A. C. Act, 1862, s. 17.

(*y*) 17 Geo. 2, c. 3, s. 2, in Appendix II., *infra*. The cases decided with reference to this statute may be found in Lumley's Union Assessment Acts, 11th ed., by the present writer, at pp. 132—134.

(*z*) See Appendix II., *infra*.

(*a*) U. A. C. Act, 1862, s. 17.

the ground that it deprived (or might deprive) a ratepayer of an opportunity of inspecting the list (*b*). The case cited in the note was decided on the ground that a ratepayer had lost a right of objection, in consequence of the proceedings being done *before* the prescribed time. The same reason does not apply where the proceedings are delayed (*c*).

When the list has been transmitted to the committee, any overseer or other ratepayer *in the union* has the right of inspecting and taking copies of or extracts from the list (*d*).

Within fourteen days after the transmission of the list to the committee, they must give notice to every railway, telegraph, canal, gas, and water company named in such list as the occupier of any property included therein, and not having any office or place of business in the parish, of the sum set down as the rateable value of the property occupied by such company (*e*).

If the committee failed to give the prescribed notice, it may be doubted whether the company would be bound by the valuation list (*f*). In considering this question it must be noticed that by s. 1 of the Union Assessment Committee Amendment Act, 1864 (*g*), the company could give notice of objection to their assessment "at any time," and could obtain relief from the assessment committee, even if they failed to hear of the amount of that assessment until after the valuation list had been finally approved.

Who may object to the valuation list.—Under the Union Assessment Committee Act, 1862, s. 18, any overseer of any parish who shall have reason to think that such parish is aggrieved by the valuation list of any parish within the union, or any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list may give notice of objection to such list.

In a "rural parish" (*h*) having a parish council, the Local Government Act, 1894, s. 6 (1) (*c*), transfers to the parish council "the powers, duties, and liabilities of the overseers with respect to objections by them in respect of the valuation list": and, by s. 19 (13) of the same Act, in a rural parish not having a parish

(*b*) See *Reigate Union v. South Eastern Rail. Co.*, [1894] 1 Q. B. 411; see also p. 531, *infra*.

(*c*) Except in the metropolis: *vide infra*, p. 636.

(*d*) U. A. C. Act, 1862, s. 17.

(*e*) U. A. C. A. Act, 1864, s. 5.

(*f*) See *R. v. Middlesex JJ.* (1872), L. R. 7 Q. B. 653, and *Westminster Corporation v. Army and Navy Auxiliary Co-operative Supply*, [1902] 2 K. B. 125; *Ryde & Konstam's Rat. App.* (1894—1904), 288, cited *infra*, pp. 633, 643, which related to a somewhat similar enactment in s. 9 of the Valuation (Metropolis) Act, 1869.

(*g*) See Appendix II., *infra*.

(*h*) That is, a parish in a rural district, or, in other words, not within a borough or any other urban district.

council, the same powers, duties, and liabilities may be conferred on the parish meeting by an order of the county council. And, by s. 33 (1) of the same Act, in a parish within any municipal borough (including a county borough) or any other urban district, the same powers, etc., may be conferred (under an order made by the Local Government Board) on the council or some other representative body within the borough or district.

Person aggrieved.—While the comprehensiveness of the language used in s. 18 of the Union Assessment Committee Act, 1862 (*i*), suggests that the words “person aggrieved” must be read with some limitation, it must be noticed that the word “aggrieved” cannot be read as meaning “directly aggrieved,” because the section expressly permits an objection by one ratepayer to the assessment of another, where the grievance must be indirect, and may be very minute.

By s. 13 of the Poor Rate Assessment and Collection Act, 1869 (*k*), “every owner of any hereditament for the rates of which he has become liable (*l*) shall have the same right of appeal (subject to the same conditions and consequences) against the valuation list and the poor rates as if he were the occupier thereof.” This section apparently does not apply to a landlord who merely contracts with his tenant to pay rates, but only when the “owner” has become liable under s. 3 or s. 4 of the same Act (*m*), but since it gives a right of appeal against a rate, it must impliedly give the right of objecting to the valuation list, which is a condition precedent to an appeal (*n*). By s. 1 of the same Act, “the occupier of any rateable hereditament [without any limitation as to value] let to him for a term not exceeding three months shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner.” It seems clear that an owner, from whose rent rates are liable to be deducted under this section, being pecuniarily affected by the amount of the assessment of his property, would be a “person aggrieved” within s. 18 of the Union Assessment Committee Act, 1862, and as such would be entitled to object to the valuation list.

It may be suggested that the express provision of s. 13 of the Poor Rate Assessment and Collection Act, 1869, giving a right of appeal to an owner who has become “liable” for the rates, implies

(*i*) See the preceding paragraph.

(*k*) 32 & 33 Vict. c. 41: see Appendix II., *infra*. The rating of owners is considered in Chapter III., *supra*, p. 60.

(*l*) Compare the language of s. 2 of the Valuation (Metropolis) Amendment Act, 1884, in Appendix II., *infra*, and see p. 635, *infra*. That Act is not in force outside the “metropolis.”

(*m*) As to the effect of these sections, *vide supra*, p. 61. And note that the word “owner” is specially defined by s. 20, *supra*, p. 64.

(*n*) See U. A. C. A. Act, 1864, s. 1: *infra*, p. 553.

that, but for that provision, an owner would not have a right of appeal. But it may be that the section was inserted, not to confer the right of appeal, but to get rid of any doubt whether the right of appeal existed.

Time for giving notice of objection.—By s. 18 of the Union Assessment Committee Act, 1862, notice of objection must be given before the expiration of twenty-eight days after notice of deposit (*i.e.*, after notice is published on the church doors). And by s. 19 of the same Act, the assessment committee may not hear objections of which notice has not been given, unless the persons entitled to notice consent to the hearing (*o*).

But under the Union Assessment Committee Amendment Act 1864, s. 1 (*p*), a ratepayer who has (either intentionally or inadvertently) failed to give notice of objection within the time prescribed by the Act of 1862, may give notice of objection “at any time,” and the committee are bound to hear the objection. It must, however, be noticed that in *Reigate Union v. South Eastern Rail. Co.* (*q*), the Queen’s Bench Division appear to have adopted, as the ground of their decision, the suggestion that under s. 1 of the Union Assessment Committee Amendment Act, 1864, objections to the rating of persons other than the objector could not be made, though they could be made under s. 18 of the Act of 1862.

Contents of the notice of objection.—The notice must be in writing, and must specify the grounds of objection (*r*). If it is intended to appeal to the sessions from the decision of the assessment committee, care must be taken to specify all the grounds of objection on which the appellant intends to rely ; as at the sessions the appellant can only rely on grounds stated in the notice of objection, and this applies even to those grounds on which the assessment committee may be unable to give relief (*s*) ; *e.g.*, where the ground of objection is that the appellant is not in occupation, of which fact the valuation list would not be conclusive.

To whom notice of objection must be given.—By the Union Assessment Committee Act, 1862, s. 18, notice of objection must be given (1) to the assessment committee ; (2) to the overseers ; and (3) “where the ground of objection shall be unfairness

(*o*) See *R. v. London JJ.*, [1897] 1 Q. B. 433 ; *infra*, p. 636.

(*p*) Set out in Appendix II., *infra*.

(*q*) [1894] 1 Q. B. 411 : *vide infra*, p. 560, where the decision on this point is discussed.

(*r*) See U. A. C. Act, 1862, s. 18.

(*s*) See *Williams v. Bedminster Union* (1874), 30 L. T. 710 ; *R. v. Lancashire JJ.* (1874), 43 L. J. M. C. 116 ; *S. C. sub nom. Salford Union v. Salford JJ.*, 38 J. P. 361 ; but see also *R. v. London and North Western Rail. Co.* (1876), 46 L. J. M. C. 102. The cases are further considered, *infra*, p. 559.

or incorrectness in the valuation of any hereditament in respect of which any person, other than the person objecting, is liable to be rated, or the omission of such hereditament," then also to such other person (*t*).

It is difficult to determine whether the Local Government Act, 1894, has substituted any persons for the overseers as the authority entitled to notice of objection (*u*). In an urban parish, or in a rural parish *not* having a parish council, the question may turn on the precise words of a special order relating to the particular parish (*x*). In a rural parish having a parish council, it appears at first sight clear that s. 6 (1) of the Local Government Act, 1894, does not substitute the parish council for the overseers, as the persons entitled to notice of objection under s. 18 of the Union Assessment Committee Act, 1862. But where a notice of objection is given under that section or under s. 1 of the Union Assessment Committee Amendment Act, 1864 (*y*), as a preliminary step towards an appeal to sessions against a rate, a difficulty arises. For under s. 6 (1) of the Local Government Act, 1894, it seems clear that the parish council are substituted for the overseers as respondents to the appeal (*z*). If so, it seems reasonable that the persons who will ultimately have to resist the appeal should be the persons to receive notice of the objection, which is the preliminary step towards bringing it: for the main object of making the objection is to give the parochial authorities (who may ultimately have to pay the costs) an opportunity of reconsidering the assessment under appeal. Therefore, although the making of an objection before an assessment committee is a proceeding distinct from an appeal to sessions, there is some ground for contending that, where the notice of objection is given in a rural parish having a parish council as a preliminary step towards an appeal against the rate, notice of objection should be given to the parish council. There is perhaps sufficient doubt upon the point to make it worth while to give notice of objection both to the parish council and to the overseers.

The hearing of objections.—The assessment committee must hold such meetings as they think necessary for hearing objections to the valuation list; and "twenty-eight days at least" (*a*) before holding every meeting for hearing objections, other than meetings

(*t*) As to the method in which notice may be served, see s. 42 of the same Act in Appendix II.

(*u*) The sections which relate to this matter are summarised *supra*, pp. 517, 518.

(*x*) *Vide supra*, pp. 517, 518.

(*y*) *Vide infra*, p. 553.

(*z*) *Vide infra*, pp. 577, 578.

(*a*) This means that twenty-eight days must intervene between the day on which the notice is given and the day on which the meeting is held: see *R. v. Shropshire J.J.* (1838), 8 A. & E. 173; *Mitchell v. Foster* (1840), 12 A. & E. 472; *Robinson v. Robinson* (1861), 30 L. J. P. M. & A. 189.

by adjournment, must cause notice of such meeting to be given to the overseers, who (on the Sunday next following) are to publish the notice at the church doors in the manner in which a rate is published (*b*).

Where the number of objections is large, and several meetings have to be held by adjournment, it is the usual practice for the assessment committee to give private notice to the individual objectors of the day (and hour) when their objections will be considered. The practice is undoubtedly convenient, but there is nothing in the Acts requiring such notice to be given.

No precise time is fixed for giving to the overseers notice of the meeting to hear objections, but it must be noticed that in *Reigate Union v. South Eastern Rail. Co.* (*c*), it was held that the assessment committee cannot finally approve the list *before* the expiration of twenty-eight days after notice is given on the church doors of the deposit of the list, within which time notice of objection may be given : and that, if they do so approve the list, it is a nullity.

The assessment committee are not bound to hold a meeting for hearing objections unless notice of objection has been duly given : and where they hold a meeting, they cannot hear objections of which notice has not been given, unless the parties entitled to notice waive the absence of notice (*d*). The committee may, however, treat the case as one in which no notice of objection has been given, and make alterations in the assessment objected to without hearing the objector (*e*).

The objector need not appear in person before the committee, but may appear by any agent, who need not necessarily be either surveyor, counsel, or solicitor (*f*).

The objector is not bound to give any evidence in support of his objection : see *R. v. Essex JJ.* (*g*), in which case the Great Eastern Railway Company, on making an objection before the West Ham Union Assessment Committee, refused to produce their books showing the gross receipts, and thereupon the committee refused to alter the list. It was held that the company were not bound to give the information asked for, and that they were entitled to appeal to quarter sessions, as having "failed to obtain relief" within s. 1 of the Union Assessment Committee Amendment Act, 1864. It seems clear that the principle of this decision applies whether the objection be made under that section after the

(*b*) See U. A. C. Act, 1862, s. 19, in Appendix II., *infra* ; and as to the manner of publishing a rate, *vide supra*, p. 521.

(*c*) [1894] 1 Q. B. 411 ; but see the remarks on that case, *infra*, p. 531.

(*d*) U. A. C. Act, 1862, s. 19 ; see also *R. v. London JJ.*, [1897] 1 Q. B. 433 ; *infra*, p. 636.

(*e*) Under U. A. C. Act, 1862, s. 20 ; *infra*, p. 527.

(*f*) *R. v. St. Mary Abbott's, Kensington*, [1891] 1 Q. B. 378 ; Ryde's Rat. App. (1891—1893), 276.

(*g*) (1882), 46 J. P. 724.

list is finally approved or under s. 18 of the Union Assessment Act, 1862, before the list is approved. The question whether a refusal on the part of the objector to give information may not in some cases have an important bearing on the question of costs at quarter sessions, will be considered hereafter (*h*).

The assessment committee, on the hearing of objections, have no power to administer an oath, or to make any order as to costs.

Powers of the committee on revision of the list.—The assessment committee may, whether any objection be or be not made to the valuation list, and either before or after the meeting for hearing objections, make such alteration in the valuation of any hereditaments included in the list, and insert any hereditament omitted therefrom, and may make such corrections in names, descriptions, and particulars, and upon such information as to them may seem sufficient; and, with the consent of the guardians (*i*), may employ a person to survey and value any hereditaments (*k*).

Where the committee appoint a valuer, he must make his valuation in writing, “showing the particulars of the several hereditaments included therein,” and the valuation must be open to inspection in the same manner and with the same incidents as to taking copies and extracts as the minute book of the committee (*l*). Notwithstanding the use of the word “particulars” in this enactment, it has been held that it does not involve the necessity of making a separate valuation of each field, and that it is enough if the valuation gives a lump sum for all the parcels in the occupation of each person (*m*).

Where the committee appoint a valuer to value *all* the rateable hereditaments of any parish, the money for the expenses may be borrowed (*n*).

There is no express provision in any of the Acts giving a valuer appointed by an assessment committee power to enter on the hereditaments to be valued; and it seems very doubtful whether the power to enter is implied in the power to make a valuation (*o*). If a ratepayer refuses to give the valuer permission to enter, and

(*h*) *Vide infra*, p. 600.

(*i*) As to the manner of obtaining the consent, see U. A. C. Act, 1862, s. 16, and note (*s*) on p. 519, *supra*.

(*k*) *Ibid.*, s. 20. The remuneration of the valuer is apparently regulated by s. 39. A further power of employing a valuer is given by the Poor Law Amendment Act, 1863 (31 & 32 Vict. c. 122), s. 32: see Appendix II., *infra*. It appears to be intended that the person appointed under that section shall sit as an assessor with the committee.

(*l*) U. A. C. A. Act, 1864, s. 4. As to the minute book of the committee, see U. A. C. Act, 1862, s. 11.

(*m*) *Rawlence v. Hursley Union* (1877), 3 Ex. D. 44. See also p. 58, *supra*.

(*n*) U. A. C. A. Act, 1864, s. 8.

(*o*) Compare ss. 20 and 26 of the U. A. C. Act, 1862, and s. 4 of U. A. C. A. Act, 1864, with s. 33 of the Act of 1862, and s. 4 of the Parochial Assessments Act, 1836. Compare also s. 38 of the Valuation (Metropolis) Act, 1869, which applies only to the metropolis. All the Acts here cited are set out in Appendix II.

afterwards appeals successfully against the rate, the sessions may refuse to give him his costs of the appeal (*p*).

Can the committee refer a valuation to arbitration?—It is very difficult to determine whether the assessment committee have any power, *when revising the valuation list*, to agree with a particular ratepayer to refer the valuation of his property to arbitration. If the judgments in *Leicester Waterworks Co. v. Nuttall* (*q*) are read as laying down general propositions, it is clear that the committee have no such power: but when read with special reference to the facts before the court, the judgments are not conclusive on this point. In that case the committee had finally approved the valuation list, rates had been made thereon, and appeals had been entered and respited. At this stage it was agreed to refer the matters in dispute to two arbitrators and an umpire, but no judge's order or order of sessions (*r*) was obtained to authorise the reference. The umpire ultimately made an award, ordering the appellants' assessment to be reduced, and directing that the appellants' costs of the reference and of the award should be paid "by the other party to the said reference." The appellants took up the award and brought an action against the committee (not against the guardians) to recover the costs, relying on s. 20 of the Union Assessment Committee Act, 1862, as giving the committee authority to refer disputes to arbitration. It was held that the section gave no such power. It must, however, be noticed with reference to what facts the decision was given: the committee had finally approved the list, and had given their decision on the objections to the valuation in question. They were therefore *functi officio*, and they had passed the stage of the proceedings at which the powers given by s. 20 of the Union Assessment Committee Act, 1862, could be used. Again, the action was brought to recover not only the fees of the umpire (who might possibly in some sense be regarded as a valuer within s. 20), but also the appellants' costs of the reference. The case above cited does not perhaps definitely decide that the committee cannot, before they finally approve the list, refer a disputed question of value to arbitration. Under s. 20 of the Union Assessment Act, 1862, they "may, with the consent of the guardians, employ a person to survey and value, etc., *or may take such other means as they may think necessary* for ascertaining the correctness" of the list. If they can employ a valuer and pay the whole of his fee, it does not seem unreasonable that they should have power to agree with the ratepayer that a valuer should decide the question,

(*p*) See 17 Geo. 2, c. 38, s. 4; 12 & 13 Vict. c. 45, s. 5, as to quarter sessions, and s. 7 of the Parochial Assessments Act, 1836, as to special sessions.

(*q*) (1878), 4 Q. B. D. 18.

(*r*) As to a reference under such an order, *vide infra*, p. 596.

under the condition that the committee should (in one event) have to pay no part of his fee, and that the ratepayer should, in any event, be bound by the valuer's decision. Whether the committee would have power to agree that the valuer should have power to order them to pay the appellants' costs of the reference, in addition to the valuer's fee, is another question (*s*).

Approval and re-deposit of list.—When the assessment committee have heard and determined all objections, and have made such alterations, insertions, and corrections in the list as to them may seem proper, they must approve the list under the hands of three members of the committee present at the meeting at which the list is approved, with the date of such approval (*t*). The Acts do not prescribe a time within which the committee must approve the list, but they must not approve the list *before* the expiration of twenty-eight days from the notice of the deposit of the list published by the overseers on the church doors, that being the time within which a ratepayer is entitled to give notice of objection (*u*). For in *Reigate Union v. South Eastern Rail. Co.* (*x*), it was held that a list finally approved before the expiration of twenty-eight days was a nullity.

Where the committee make any alteration in the valuation of any hereditaments included in, or insert any hereditament omitted from the list, they must cause such list to be re-deposited, and must cause the like notice to be given of the re-deposit as of the original deposit (*y*). The duty of depositing the list and giving the required notice, is to be performed by the overseers, not by the clerk of the assessment committee (*z*). If the list as altered under s. 20 of the Union Assessment Committee Act, 1862, is not re-deposited under s. 21, it is invalid, and any contribution-orders based thereon are also invalid (*a*). But when the committee make an alteration on an objection under s. 1 of the Union Assessment Committee Amendment Act, 1864, after the list has been finally approved, no re-deposit is necessary (*b*).

The committee must appoint a day, not less than seven nor more than fourteen days from the re-deposit (*c*), for hearing objections to the list as altered (*d*). Apparently, the notice of the meeting is to be appended to the notice of re-deposit; but the Acts contain

(*s*) *Cf. Grand Junction Waterworks Co. v. Paddington*, cited *infra*, p. 689.

(*t*) U. A. C. Act, 1862, s. 20.

(*u*) U. A. C. Act, 1862, ss. 17, 18. (*x*) [1894] 1 Q. B. 411: *vide infra*, p. 531.

(*y*) U. A. C. Act, 1862, s. 21. As to the method of giving notice *vide supra*, pp. 520, 521.

(*z*) *R. v. Overseers of Chorlton-on-Medlock* (1865), 35 L. J. M. C. 56.

(*a*) *R. v. Chorlton Union* (1872), L. R. 8 Q. B. 5.

(*b*) *R. v. Edmonds* (1874), L. R. 9 Q. B. 598.

(*c*) The time runs from the re-deposit, not from the publication of notice on the church doors.

(*d*) U. A. C. Act, 1862, s. 21.

no special direction on the point. Nor do they require that private notice of the alterations should be given to the persons affected by them, as is required in the metropolis in certain cases (*e*).

Objections after re-deposit.—As the committee are directed to hold a meeting for hearing objections after re-deposit, the Acts impliedly give the power of making objections, and presumably intend that, if objections are made, notice of them should be given. It is probably meant that notice shall be given to the same persons as in the case of objection after the first deposit of the list, but the directions as to *time* for giving notice cannot possibly apply to objections after re-deposit (*f*). It seems that the remarks as to the method of hearing objections before re-deposit (*g*) will apply to objections after re-deposit. It is not clear whether objections after re-deposit are limited to objections to alterations made by the assessment committee in revising the list (*h*), or may be made generally to any entry in the list. If a ratepayer meets with any difficulty in getting his objection heard (on the ground that his notice is out of time or otherwise), he can wait until the list has been finally approved, and then give notice of objection after a rate has been made “at any time” (*i*): the committee will then be bound to hear it, and upon their decision he can appeal against the rate.

By the concluding words of s. 21 of the Union Assessment Committee Act, 1862 (*k*), the committee are impliedly authorised not only to hear and determine objections, but also to make “*such* further alterations, insertions, and corrections.” The words as they stand are ungrammatical, because there is nothing to which the word “*such*” can refer. The London quarter sessions have held (*l*) that the committee can, after re-deposit, make alterations in assessments not previously objected to. If the committee do make such alterations, they must apparently send the list back to the overseers for a second re-deposit, and hold a meeting for hearing objections to the alterations. For it would be anomalous if, when alterations are made after first deposit, and the list is not re-deposited, it is invalid (*m*), while alterations made at a later stage require no re-deposit. *Outside the metropolis*, the danger of injustice to a ratepayer, whose assessment has been altered without re-deposit, is mitigated by the right to object “at any time” (*n*).

(*e*) See Valuation (Metropolis) Act, 1869, s. 9 (2), in Appendix II., *infra*.

(*f*) *Vide supra*, p. 524.

(*g*) *Vide supra*, pp. 525, 526.

(*h*) The provisions of the Valuation (Metropolis) Act, 1869, s. 42 (7), imply that they are so limited in the metropolis: *vide infra*, p. 639.

(*i*) See U. A. C. A. Act, 1864, s. 1.

(*k*) See Appendix II., *infra*.

(*l*) *South Eastern Rail. Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 41; *vide infra*, p. 640.

(*m*) *R. v. Chorlton Union* (1872), L. R. 8 Q. B. 5; *supra*, p. 529.

(*n*) See U. A. C. A. Act, 1864, s. 1, in Appendix II. That section is repealed “as to the metropolis” by s. 77 of the Valuation (Metropolis) Act, 1869.

Final approval of valuation list.—When the committee have heard and determined all objections, and made all corrections, etc., they must finally approve the list under the hands of three members of the committee present at the meeting at which the list is approved, with the date of such approval (*o*). No precise time is prescribed within which the valuation list must be approved, but the committee must not approve it *before* the expiration of twenty-eight days after notice of deposit, within which time a ratepayer is entitled to give notice of objection (*p*). For in *Reigate Union v. South Eastern Rail. Co.* (*q*), it was held that a valuation list finally approved before the expiration of twenty-eight days after notice of deposit was a nullity. The ground of this decision was that by the premature approval of the list, the company were deprived of an opportunity of objecting to the assessments of third persons, which objections (as the court seem to have thought) could not be made under s. 1 of the Union Assessment Committee Amendment Act, 1864, which enables objections to be made “at any time.” Assuming that s. 1 of the Act of 1864 is limited in its application to objections against the assessment of the objector’s own property (*r*), it is still somewhat difficult to reconcile the decision with *R. v. Ingall* (*s*), where it was held that failure to observe the corresponding provisions of the Valuation (Metropolis) Act, 1869, as to times for proceedings in the revision of a valuation list in the metropolis, did not render the list a nullity, because the provisions of the Valuation (Metropolis) Act, 1869, as to time were directory merely, and not imperative. The Act of 1869 incorporates (*inter alia*) s. 18 of the Union Assessment Committee Act, 1862, on which *Reigate Union v. South Eastern Rail. Co.* was decided, the later Act merely substituting a period of twenty-five for twenty-eight days, as the time for making objections. It is true that in *R. v. Ingall*, the irregularity consisted in delaying the proceedings, and in *Reigate Union v. South Eastern Rail. Co.*, it consisted in approving the list too soon : but it is hardly possible to distinguish the cases on this ground, because in *R. v. Ingall* the effect of the delay was to deprive the appellant of an opportunity of appealing to special sessions, a point specially referred to in the argument.

When the assessment committee finally approve the valuation list, they must cause the totals of the gross and rateable values to be ascertained and entered at the foot of the list (*t*), and the total rateable value of the “agricultural land” must be stated separately from the total rateable value of the buildings or other

(*o*) U. A. C. Act, 1862, ss. 20, 21.

(*p*) *Ibid.*, ss. 17, 18.

(*q*) [189†] 1 Q. B. 411.

(*r*) The correctness of this assumption is considered *infra*, p. 560.

(*s*) (1876), 2 Q. B. D. 199 : *vide infra*, p. 629.

(*t*) Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 30, in Appendix II.

hereditaments in the parish (*u*). The clerk of the assessment committee must send annually in December copies of the totals of the gross and rateable values in the list (stating separately the total rateable value of "agricultural land" and of other property), and, where the totals have been altered by supplemental lists, copies of the totals as so altered, to the clerk of the peace for the county (*x*).

The assessment committee must retain the valuation list for the use of the guardians, and it is to be deposited at the board room or some other convenient place to be appointed by the guardians, and is to be open to inspection (*y*). The committee must also deliver to the overseers a fair copy of the list, signed by the three members of the committee who approved of it, and countersigned by the clerk of the committee: and this copy must be preserved by the overseers with the rate books of the parish, and is to be open to inspection in the same way as the rate books (*z*). Provision is also made for supplying the place of valuation lists lost or injured (*a*).

Effect of the valuation list.—Under the Statute of Elizabeth, as explained by the Parochial Assessments Act, 1836, the rate was to be made on an estimate of the "net annual value," the amount of each ratepayer's liability being left, in the first instance, to the discretion of the overseers; and each fresh rate, as it was made, might (or might not), at the overseers' discretion, be made upon a fresh estimate of value different from the preceding rate. If the ratepayer was dissatisfied with the overseers' estimate, he could appeal against each rate either to the quarter sessions (*b*) or to the special sessions (*c*); and the justices could either quash or confirm the rate altogether, or might amend the assessment appealed against.

The Union Assessment Committee Act, 1862, for the first time introduced a valuation list, making it a (more or less) permanent standard of value, and made the discretion of the overseers (in fixing the values stated in the list) subject to the control of the assessment committee. In making the rate the overseers were bound (*d*) to follow the valuation list for the time being in force. But while the overseers were bound by the valuation list, the rate-

(*u*) See Agricultural Rates Act, 1896, s. 5 (*b*), in Appendix II. *infra*. The definition of "agricultural land" is discussed *supra*, p. 113 *et seq.*

(*x*) U. A. C. A. Act, 1864, s. 9; Agricultural Rates Act, 1896, s. 5 (*b*).

(*y*) Poor Law Amendment Act, 1868, s. 30; U. A. C. Act, 1862, s. 31.

(*z*) Poor Law Amendment Act, 1868, s. 30; U. A. C. Act, 1862, s. 23. As to the inspection of rate books, *vide supra*, p. 521.

(*a*) Poor Law Amendment Act, 1868, s. 31: see Appendix II., *infra*.

(*b*) Under 43 Eliz. c. 2, as amended by 17 Geo. 2, c. 38, and 41 Geo. 3, c. 23: see Appendix II., *infra*.

(*c*) Under ss. 6, 7 of the Parochial Assessments Act, 1836.

(*d*) See U. A. C. Act, 1862, s. 28, in Appendix II. The exception of property becoming liable to be rated in parts not separately rated in the valuation list, and the case of a rate made under a local Act, may for the present be disregarded.

payer was not, and if he was dissatisfied with the estimate made of the value of his property, his remedy remained (as before) to appeal against the particular rate (not against the valuation list) to the special or quarter sessions under the statutes already cited ; for the Union Assessment Committee Act, 1862, gave a ratepayer no right of appeal against the valuation list (*e*). If, on an appeal against a rate, the sessions amended it by altering the assessment appealed against, then the assessment committee were required to alter the valuation list so as to bring it into conformity with the justices' decision (*f*). If the sessions quashed the rate altogether on the ground that it was impossible for them to amend it so as to do justice, then it became necessary for a new list to be made, since it would be useless to make a new rate based on a list which the sessions had already held to be unfair.

Except where the rate is made under a local Act (*g*), every rate must be based upon the values (*h*) stated in the valuation list in force ; except that where, by reason of an alteration in the occupation, property has become liable to be rated in parts not separately rated in the valuation list, such parts may be rated according to such amounts as shall be "fair apportioned parts" of the rateable value stated in the list of the hereditaments out of which such parts have been constituted (*i*). The object of this provision appears to be to provide a speedy method of dividing a valuation without involving the delay which must occur in making a supplemental valuation list showing the division, if the times prescribed by ss. 17 and 18 of the Union Assessment Committee Act, 1862, are observed. If the ratepayer is dissatisfied with the apportionment made by the overseers, he can appeal against the rate. It is perhaps not absolutely necessary, but it is probably advisable, before appealing, to give notice of objection under s. 1 of the Union Assessment Committee Amendment Act, 1864. But the appellant must take care that he does not (while waiting for the hearing of his objection) pass by the "next practicable sessions" after the making of the rate ; in which case, if the making of the objection be held to be unnecessary, an appeal to subsequent sessions would be too late. To avoid this danger he can (without giving any notice of appeal) enter the appeal at "the next practicable sessions" after the making of the rate, and have it respite to the next sessions (*k*) ; and meanwhile can get the objection heard, and give notice of appeal.

(*e*) Under s. 32, a right of appeal against the list is given to overseers only : *vide infra*, p. 537, as to the nature of that appeal.

(*f*) U. A. C. Act, 1862, s. 22.

(*g*) U. A. C. Act, 1862, s. 29.

(*h*) The rate need not, of course, follow the list as to the name of the occupier, which must be changed (if necessary) in every fresh rate.

(*i*) U. A. C. Act, 1862, s. 28. The difficulty of applying this enactment is noted *infra*, p. 536.

(*k*) See *R. v. Eyre* (1856), 6 E. & B. 992, at pp. 997, 998 ; *infra*, pp. 574—576.

Outside the metropolis the valuation list is not conclusive for purposes of inhabited house duty (*l*), or of income tax, but (speaking generally) it regulates the amount which every individual ratepayer has to pay towards most of the local rates (*m*).

Duration and alteration of valuation list.—Except where the rate is made under a local Act, the valuation list approved by the committee and delivered to the overseers will be the list in force, with and subject to the alterations and additions for the time being made by any supplemental lists (*n*), and will continue in force (subject to what is said below) until a new valuation list is substituted, which the committee can order to be done “from time to time where they see fit” (*o*).

The system of re-valuation once in every five years, introduced by the Valuation (Metropolis) Act, 1869, does not prevail outside the metropolis, and there is no maximum or minimum time fixed for the duration of a valuation list in a parish outside the metropolis.

Apart from the possibility of alteration by means of a supplemental list containing some only of the hereditaments in the parish, a list under the Union Assessment Acts may be altered after it has been finally approved in the following ways :

(1) It may be altered by the quarter sessions on an appeal against the list itself under ss. 32, 33, of the Union Assessment Committee Act, 1862 (*p*).

(2) It may be altered by the assessment committee on an objection which may be made by a ratepayer at any time under s. 1 of the Union Assessment Committee Amendment Act, 1864 (*q*).

(3) It may be altered by the committee under the Union Assessment Committee Act, 1862, s. 22, in consequence of a decision of special or quarter sessions, on an appeal against a rate, whereby the rate is amended: the valuation list will then be altered so as to bring it into conformity with the rate as amended.

When supplemental lists are necessary.—The overseers are to make a supplemental list in the following cases (*r*) :

(1) When property not included in the valuation list becomes rateable ;

(*l*) *Walker v. Brisley*, [1900] 2 K. B. 735 ; 4 Tax Cas. 254.

(*m*) See Lumley's “Union Assessment Acts,” 11th ed. (by the present writer), at pp. 52—54. The partial exemptions conferred on railways, land covered with water, and other properties under the Public Health Act, 1875, ss. 211, 230, and similar enactments, are not considered in this volume. As to the rates and taxes for which the list is binding inside the metropolis, see p. 645, *infra*.

(*n*) The question where it is necessary to make a supplemental list is considered *infra*, pp. 535, 536.

(*o*) U. A. C. Act, 1862, ss. 24, 26.

(*p*) *Vide infra*, p. 537.

(*q*) *Vide infra*, p. 553, 564.

(*r*) U. A. C. Act, 1862, s. 25.

- (2) When, by reason of any alteration in the occupation of any property included in the list, such property becomes liable to be rated in parts not separately rated in the valuation list ;
- (3) Where it appears to the overseers that any property included in the list "has been increased or reduced in value since the valuation thereof, whether by building, destruction of building, or other alteration in the condition thereof, or otherwise" (s).

Before considering these three classes in detail, it may be noticed that it is the duty of the overseers to take the first step, and that a ratepayer has no power to compel them to make a supplemental list, if they neglect or refuse to do so. He may, however, as a "person aggrieved" apply to the assessment committee, who have power, "from time to time, where they see fit," to direct the overseers to make a supplemental list (t). And a still more convenient remedy is given by s. 1 of the Union Assessment Committee Amendment Act, 1864, under which a ratepayer may give to the assessment committee notice of objection to the list "at any time," and the committee must hear the objection and have full power to call for and amend the list, and the overseers must then alter the current rate accordingly.

New property becoming rateable.—As soon as new houses are ready for occupation, even though not yet occupied, they should be inserted in a valuation list (u). Although unoccupied property cannot be rated, one effect of entering such property in a supplemental list (which becomes in effect part of the valuation list of the parish (v)) is that the contribution of the parish to the common fund of the union is increased (w).

In order that the occupier of a new house or other building (y) may not escape from the payment of rates pending the proceedings connected with the making of a supplemental list, the Poor Law Amendment Act, 1868, s. 38 (z), empowers the overseers to add his name to the current rate, and the person so entered becomes liable for a proportionate part of the rate, and may appeal against it: and the overseers are to enter the name in a supplemental list and forward it to the assessment committee.

Where property is entered in a valuation list, and is unoccupied at the date of the rate, but becomes occupied during the period for which the rate is made, and where the occupier ceases to occupy

(s) As to the construction of these two words, *vide infra*, p. 536.

(t) U. A. C. Act, 1862, s. 26.

(u) *R. v. Malden* (1869), L. R. 4 Q. B. 326.

(v) U. A. C. Act, 1862, s. 24.

(w) *Ibid.*, s. 30.

(y) Note that the section does not apply to other property, and see p. 55, *supra*.

(z) See Appendix II., *infra*.

during the same period, no supplemental list is necessary, but the rate must be altered under the statutes already referred to (a).

Hereditaments becoming rateable in parts.—Although by s. 25 of the Union Assessment Committee Act, 1862, the overseers are directed to make a supplemental list, whenever property becomes liable to be rated in parts not separately valued in the valuation list in force (*e.g.*, when a house rated at one lump sum in the valuation list is afterwards let out in flats, or where a farm is divided), by s. 28 of the same Act the overseers in making the rate are empowered to apportion the rateable value of the whole hereditament among the several parts, whether a supplemental list showing the values of the separate parts has been made or not. This provision is perhaps intended mainly as a temporary measure pending the making of a supplemental list for the same property, or is to be limited in its application to such property as agricultural land, which may be valued by the acre, where no special value attaches to one part more than to another. The method of apportionment by the overseers, free from the control of the assessment committee, seems to be inappropriate to the valuation of large buildings in towns, where considerable difference of opinion may exist as to the relative values of the several floors: and it is submitted that the overseers, whenever it becomes necessary to make an apportionment (as a temporary measure) for the purpose of collecting a particular rate, should, as soon as possible, proceed to make a supplemental list containing the property affected (b).

Property increased or reduced in value.—The overseers are to make a supplemental list whenever property is increased or reduced in value, “whether by building, destruction of building, or other alteration in the condition thereof, *or otherwise*” (c). The question may arise whether the two last words let in all alterations of value from whatever cause, or whether they ought to be construed in the “*ejusdem generis*” sense, that is, whether they ought to be limited to alterations of the same character as “building, or destruction of building” (d). Probably they would be held wide enough to include the grant, or taking away, of a license whereby a shop became converted into a public-house, or *vice versa*; but would they cover an alteration in value due to the opening of a new bridge some distance from the hereditament in question? Any question of this kind can be avoided if the overseers, instead of making a supplemental list under s. 25, apply

(a) *Vide supra*, pp. 54, 55.

(b) See p. 644, *infra*, as to the effect of this section in the metropolis.

(c) U. A. C. Act, 1862, s. 25.

(d) See *East and West India Dock Case, R. v. Poplar Union* (1883), 11 Q. B. D. 721, at p. 727.

to the assessment committee to direct a new valuation of the hereditament, and the making of a supplemental list, which the committee can do under s. 26 of the Union Assessment Committee Act, 1862, "where they see fit."

Appeal against the valuation list.—This form of appeal must be distinguished from an appeal against the rate made in accordance with the valuation list. The right of appeal against the valuation list is given by ss. 32—34 of the Union Assessment Committee Act, 1862 (*e*). The object of those sections is to give a means of correcting inequalities as between one parish and another, and not between the several ratepayers of one parish amongst themselves. The right of appeal is given not to individual ratepayers, but to the overseers; but in a rural parish having a parish council, the right of appeal is now vested in the parish council (*f*). The appeal lies to the quarter sessions, not to the special sessions. This right of appeal is so seldom exercised that it has been thought unnecessary to deal with it further in this volume (*g*).

This form of appeal must be distinguished from the appeal against a valuation list in the metropolis, under the Valuation (Metropolis) Act, 1869, which gives the right of appeal to an individual ratepayer as a means of correcting his own assessment (*h*).

(*e*) See Appendix II., *infra*.

(*f*) See the Local Government Act, 1894, s. 6 (1); *supra*, p. 517.

(*g*) In Lumley's Union Assessment Acts, 11th ed., at pp. 60—68, this form of appeal is further considered.

(*h*) *Vide infra*, pp. 666, 673.

CHAPTER XXVIII.

APPEAL AGAINST A RATE TO SPECIAL SESSIONS.

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Appeals to special sessions and quarter sessions distinguished.—The right of appeal against a rate to quarter sessions was originally given by s. 5 of the Statute of Elizabeth, which has been amended by later Acts (*a*). The right of appeal to special sessions, and from special sessions to quarter sessions, was given by ss. 6 and 7 of the Parochial Assessments Act, 1836 (*b*). An appeal against a rate may be taken direct to quarter sessions upon any ground, whether of unfairness of amount, or of illegality and invalidity of the rate or of the valuation list on which it is based, or of non-liability (*c*). But an appeal can be taken to special sessions upon the ground only of “inequality, unfairness, or incorrectness in the valuation of any hereditaments included in” the rate: and by the proviso at the end of s. 6 of the Parochial Assessments Act, 1836, “the justices in special sessions shall not be authorised to inquire into the liability of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same shall have been rated.” So that an appeal cannot be taken to special sessions on such grounds as the

(*a*) See, especially, 17 Geo. 2, c. 38; 41 Geo. 3, c. 23, in Appendix II., *infra*.

(*b*) 6 & 7 Will. 4, c. 96: see Appendix II.

(*c*) See *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868, at pp. 879, 880.

following: that the rate itself is a nullity; that some person is wrongly omitted; that the appellant is not an occupier of the land for which he is rated; that he is specially exempt by statute. Whenever there is any good ground for appealing, the appellant may always appeal direct to quarter sessions; and it is only upon questions of "inequality, unfairness, or incorrectness in valuation" that he has even the option of appealing to special sessions. In considering whether to exercise this option it must be remembered that an appeal to special sessions is generally as speedy as, and less costly than, an appeal to quarter sessions; but while an appellant can appeal from the special sessions to quarter sessions (*d*), the same right of appeal is given to the respondents, including the assessment committee (*e*). So that an appellant who succeeds at special sessions may find that he has to incur the cost of resisting an appeal to quarter sessions. It is therefore not advisable to appeal to special sessions where the amount at stake is very large, or the decision may involve some important question of principle.

Time for appealing to special sessions, and conditions precedent.—The justices for every petty sessions division must hold a special sessions for hearing appeals against rates four times a year, and must give public notice at the church doors of the time and place of holding such sessions (*f*). "Special sessions" are petty sessions held on a particular day for a particular purpose (*g*). It has been held that, although the Parochial Assessments Act, 1836 (which created the right of appeal) does not mention any limit of time for appealing, the appeal must be to the "next practicable sessions" in the same way as an appeal to quarter sessions under 17 Geo. 2, c. 38 (*h*). The meaning of the phrase "the next practicable sessions" will be considered in dealing with appeals to quarter sessions (*i*). It is submitted that the right of appeal given by the Parochial Assessments Act, 1836, is an *additional* right of appeal, so that if the "next practicable" quarter sessions happen to be held first, the appellant may pass them by, and appeal to the next practicable special sessions (*k*).

The second proviso in s. 7 expressly preserves the right of appeal to quarter sessions, so that if the "next practicable" special

(*d*) Under s. 6 of the Parochial Assessments Act, 1836.

(*e*) *Newton and Llanidloes Union v. Pryce Jones* (1881), 45 J. P. 407.

(*f*) Parochial Assessments Act, 1836, s. 6: see Appendix II. Note that the section is repealed as to the "metropolis" by s. 77 of the Valuation (Metropolis) Act, 1869.

(*g*) *Per LOPES, L.J.*: *Ex parte Overseers of Workington*, [1894] 1 Q. B. 416, at p. 418.

(*h*) *R. v. Trafford* (1850), 15 Q. B. 200; *S. C. sub nom. R. v. Lancashire JJ.*, 19 L. J. M. C. 199; followed in *R. v. Hammond* (1850), 4 New Sess. Cas. 316.

(*i*) *Infra*, p. 570.

(*k*) This seems to be implied in the decision in *R. v. Trafford, ubi supra*, if the dates are looked at. Otherwise there would have been a short answer to the case if the appellant was bound to go, at the latest, to the next practicable quarter sessions.

sessions happen to come first, the appellant may wait till the "next practicable" quarter sessions.

Before appealing to special sessions, the appellant must have given to the assessment committee notice of objection against the valuation list and must have failed to obtain relief (*l*). The effect of this requirement is considered in the chapter dealing with the right of appeal to quarter sessions (*m*).

Notice of appeal to special sessions.—After failing to obtain relief from the assessment committee, the appellant must give to the committee twenty-one days' notice in writing (*n*) previous to the special sessions, of the intention to appeal, and the grounds thereof (*o*). By the Parochial Assessments Act, 1836, s. 6, notice in writing "under the hand of the complainant" (*p*) was to be given "seven days *at least*" (*q*) before the day appointed for the special sessions to the "collector, overseers, or other persons by whom the rate was made" (*r*). In *R. v. Devon J.J.* (*s*), it was held that notice given to one only of the overseers was sufficient. The Poor Rate Act, 1801 (*t*), which requires service of notice on the overseers, "or any two or more of them," in the case of appeals to quarter sessions, was apparently held not to apply to appeals to special sessions on this point.

The effect of the Local Government Act, 1894, upon the question whether the parish council, or parish meeting, or some other authority, are now entitled to notice of appeal in addition to, or in substitution for, the overseers, and the position of the churchwardens are considered below (*u*).

The giving of the prescribed notices is a condition precedent to the hearing of the appeal, and if they have not been given the appeal must be dismissed, for the power to enter and respite an appeal, given to quarter sessions by 17 Geo. 2, c. 38, s. 4 (*v*), does not extend to special sessions (*y*).

The entry of the appeal with the clerk of the justices for the petty sessional division may perhaps be affected by rules of practice

(*l*) U. A. C. A. Act, 1864, s. 1 : see Appendix II., *infra*.

(*m*) *Infra*, p. 553.

(*n*) In counting the twenty-one days, one day must be reckoned inclusively and one exclusively : *R. v. West Riding J.J.* (1833), 4 B. & A. 685. As to the method of service, *vide infra*, p. 579.

(*o*) U. A. C. A. Act, 1864, s. 1 : see Appendix II.

(*p*) It will be safest for the appellant to assume that notice signed by the appellant's solicitor is not sufficient ; but see *R. v. Kent J.J.* (1873), L. R. 8 Q. B. 305 ; *infra*, p. 580, note (*e*).

(*q*) Seven days must intervene between the day on which notice is given and the day on which the sessions are held : see *R. v. Shropshire J.J.* (1838), 8 A. & E. 173 ; *Mitchell v. Foster* (1840), 12 A. & E. 472.

(*r*) As to the method of service, *vide infra*, p. 580.

(*s*) (1848), 3 New Sess. Cas. 96.

(*t*) 41 Geo. 3, c. 23, s. 6 : see Appendix II., *infra*.

(*u*) *Vide infra*, p. 577.

(*v*) *Vide infra*, p. 574, and contrast that section with s. 6 of the Parochial Assessments Act, 1836 ; both Acts are set out in Appendix II.

(*y*) *R. v. Tewkesbury J.J.*, [1903] 1 K. B. 39 ; Ryde & Konstam's Rat. App. (1894—1904) 312.

or standing orders of the court. Although the justices cannot refuse altogether to entertain an appeal merely on account of non-compliance with their rules, if those rules impose a fresh condition not required by statute, yet it would probably be held that the justices could order an adjournment of the hearing at the cost of the appellant, if the rules as to the entry of the appeal were not complied with (z).

Appearance of assessment committee as respondents.—The assessment committee have the same right (subject to the same conditions) of appearing as respondents to an appeal, at special sessions as at quarter sessions (a) : their right to appear and their rights and liabilities as to costs will be considered hereafter (b).

Powers of special sessions.—By s. 7 of the Parochial Assessments Act, 1836, the justices in special sessions “shall *for the aforesaid purpose* [*i.e.*, for the purpose of hearing appeals under s. 6] have all the powers of amending or quashing any rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions has upon appeals from any such rate, *except as herein excepted*.” The words printed in italics seem to show clearly that the special sessions would have no power to amend a rate by inserting names which are omitted, or by striking out the name of an occupier on the ground that he was specially exempt ; for the appeals which the special sessions are authorised to hear under s. 6, are limited to appeals on the ground of unfair valuation (c). The powers of quarter sessions to amend a rate (d), and to award costs to the parties (e), will be considered hereafter.

There is a difficulty as to costs at special sessions where an appellant, after giving notice of appeal, does not enter it. It is clear that at the date of the passing of the Parochial Assessments Act, 1836, *quarter sessions* had no power to make any order as to costs of an appeal, of which notice had been given, but which was not entered, and that power to make such an order was first given to *quarter sessions* by s. 6 of the Quarter Sessions Act, 1849 (f). The Parochial Assessments Act, 1836, by s. 7, provides that special sessions “shall . . . have all the powers . . . of awarding costs, which any court of quarter sessions has upon appeals, etc.” The question, therefore, is whether this section gives to special sessions all the powers as to costs which quarter sessions

(z) See *R. v. Pawlett* (1873), L. R. 8 Q. B. 491 ; *R. v. Bird*, [1898] 2 Q. B. 340 ; *et vide infra*, pp. 584, 585.

(a) U. A. C. A. Act, 1864, s. 2 : see Appendix II., *infra*.

(b) *Infra*, pp. 590, 599.

(d) *Vide infra*, p. 592.

(c) *Vide supra*, p. 538.

(e) *Vide infra*, p. 597.

(f) 12 & 13 Vict. c. 45, commonly called “Baines’ Act,” *vide infra*, p. 598.

had when the Act of 1836 was passed, or all the powers which for the time being quarter sessions may have. If the former is the true construction, special sessions can make no order as to costs of an appeal which is not entered ; if the latter is the true construction, they can make such an order. In *R. v. Norman (g)*, the special sessions had refused to make such an order on the ground that they had no jurisdiction ; a rule *nisi* under 11 & 12 Viet. c. 44, to hear and determine the application for costs was granted by WILLS and KENNEDY, JJ., and was afterwards made absolute by Lord ALVERSTONE, C.J., and LAWRENCE, J. ; but the decision cannot be regarded as of high authority, because nobody appeared to show cause, and the rule was made absolute without calling upon counsel to support it.

It seems clear that the special sessions have no power to order an appeal to be referred to arbitration. It may be noticed that s. 13 of Baines' Act (*h*), which enables quarter sessions to refer an appeal to arbitration, does not apply to special sessions.

The question whether particular justices may be disqualified, as ratepayers or otherwise, for hearing an appeal at special sessions, may be conveniently deferred until we deal with disqualifications at quarter sessions (*i*).

Although s. 6 of the Parochial Assessments Act, 1836, enacts that the decision of the special sessions " shall be binding and conclusive on the parties " unless the person impugning the decision shall appeal to quarter sessions within the time specified in the section, this merely makes the decision conclusive as to the particular rate the subject of the appeal, and a fresh appeal may be brought against any subsequent rate, whether based on the same valuation list, or not, direct to quarter sessions (*k*), or (it is submitted) to special sessions.

Statement of a case for the opinion of the King's Bench Division.—It is very doubtful whether the special sessions can state a case for the opinion of the King's Bench Division, if any point of law arises. In *Wheeler v. Overseers of Birmingham (l)*, it was held that special sessions had no power to state a case under s. 2 of the Summary Jurisdiction Act, 1857 (*m*), which enables a party aggrieved by the determination by justices of any " information or complaint " to ask for a case. The difficulty that an appeal against a rate is not an " information or complaint," is, perhaps, met by s. 33 of the Summary Jurisdiction Act, 1879, under which any person " aggrieved who desires to question a

(g) April 17th, 1901 ; not reported ; from the writer's MS. notes.

(h) 12 & 13 Viet. c. 45 : see Appendix II., *infra*.

(i) *Vide infra*, pp. 586—590.

(k) *R. v. Esser JJ.*, [1902] 1 K. B. 180, at p. 184.

(l) (1860). 29 L. J. M. C. 175 n.

(m) 20 & 21 Viet. c. 43.

conviction, order, determination, or other proceeding of a court of summary jurisdiction," may apply for a case; but this section leaves open the still more difficult question, whether justices sitting in special sessions to hear a rating appeal are "a court of summary jurisdiction." The writer is of opinion that they are not (*n*), and it will in any event be safer (if any point of law arises, and the parties will consent to the course proposed) not to apply for a case under the Summary Jurisdiction Act, 1879, s. 33, but to give notice of appeal to quarter sessions, and then to state a case for the opinion of the High Court under s. 11 of 12 & 13 Vict. c. 45 (*o*), when the case will be decided without the necessity of a hearing at quarter sessions.

Appeal from special sessions to quarter sessions: under what Act?—The Parochial Assessments Act, 1836, by s. 6 (*p*), gives a right of appeal from special sessions to quarter sessions, on an appeal against a rate. It has been suggested that the procedure as to notices, etc., is now governed by s. 31 of the Summary Jurisdiction Act, 1879. The writer is of opinion that that Act does not apply, but as his opinion differs from that stated in at least one text book of good authority, it seems desirable to give the reason for the conclusion that the procedure is regulated by the Act of 1836 (*q*), and not by the Summary Jurisdiction Act, 1879. The question which of the two Acts applies is of vital importance, because the time for appealing, the persons entitled to notice, and the quarter sessions to which the appeal must be taken, are not the same under the two Acts.

The Summary Jurisdiction Act, 1879, s. 31, enacts that "where any person is authorised *by this Act or by any future Act* to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court, subject to the conditions and regulations" specified in the section. The words here printed in *italics* are repealed by s. 4 of the Summary Jurisdiction Act, 1884: so that, while in its original form s. 31 of the Act of 1879 could not possibly apply to appeals under the Parochial Assessments Act, 1836, after the repeal of the words referred to it might possibly be said to do so.

In order that it should so apply, two points must be proved: viz. (1) that special sessions sitting to hear an appeal against a rate under s. 6 of the Parochial Assessments Act, 1836, constitute a "court of summary jurisdiction"; and (2) that the decision on

(*n*) The reasons for this opinion are given *infra*, p. 544.

(*o*) This course was suggested by the Queen's Bench in *Wheeler v. Overseers of Burmington* (1860), 29 L. J. M. C. 175 n.

(*p*) See Appendix II., *infra*.

(*q*) The provisions as to notices, etc., contained in the Act of 1836, are summarised, *infra*, pp. 546—548.

such an appeal is a "conviction or order" within s. 31 of the Summary Jurisdiction Act, 1879.

(1) It is submitted that the special sessions sitting to hear such an appeal are not a "court of summary jurisdiction." By s. 13 of the Interpretation Act, 1889 (*r*), in every Act, "unless the contrary intention appears," the expression "court of summary jurisdiction" means "any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, . . . and whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his commission, or under the common law." Notwithstanding the wide language here used, it was held in *Boulter v. Kent, J.J.* (*s*), that justices at a licensing meeting are not a "court of summary jurisdiction," and it is submitted that the reasons given for that decision afford strong grounds for contending that justices sitting in special sessions to hear rating appeals do not constitute a "court of summary jurisdiction." Thus Lord DAVEY said (*t*) that the words of the definition in the Interpretation Act, 1889, must be read in the same sense as that in which they were used in the repealed section (s. 7 of the Summary Jurisdiction Act, 1884), which did not apply to justices "except when sitting as a court and exercising summary jurisdiction." And Lord HALSBURY, L.C., said (*u*), "a court of summary jurisdiction must, of course, be a court, and the words 'summary jurisdiction' appear to me to refer to a procedure primarily, at all events, criminal, wherein the court does not proceed on the finding of a grand jury or information by the Attorney-General, but has the power to deal with an offence without those provisions which the original constitution of this country enforced as a security for the subject against criminal procedure."

The various cases in which "summary jurisdiction" may be exercised can (it seems) be regarded as so many exceptions from the common law rule that an offender must be tried by a jury. An appeal against a rate under the Statute of Elizabeth and the amending Acts, 17 Geo. 2, c. 38, and 41 Geo. 3, c. 23, was in no case tried by a jury, nor can any of the parties be regarded as an offender, on trial; and there seems no more reason for saying that justices sitting in special sessions to hear a rating appeal constitute a "court of summary jurisdiction" than for saying that justices sitting in quarter sessions to hear an appeal from special sessions (or to hear an original appeal against a rate) constitute a court of summary jurisdiction. And if the definition in the Interpretation Act, 1889, is limited (as it must apparently be

(*r*) This Act repeals and re-enacts the definition given in s. 50 of the Summary Jurisdiction Act, 1879, as extended by s. 7 of the Summary Jurisdiction Act, 1884.

(*s*) [1897] A. C. 556.

(*t*) [1897] A. C., at p. 573.

(*u*) *Ibid.*, p. 563.

limited) so as to prevent a court of quarter sessions, sitting to hear either form of appeal, from coming within the term "court of summary jurisdiction," it is submitted that the definition must almost necessarily be construed so as to exclude special sessions sitting to hear an appeal against a rate.

(2) Assuming that the view here stated is wrong, the question remains whether a decision of the special sessions on such an appeal is a "conviction or order" within s. 31 of the Summary Jurisdiction Act, 1879. There is no doubt that the word "order" if it stood by itself in the section, is sufficiently wide to cover the decision in a rating appeal, and the word "order" is in fact twice used in s. 7 of the Parochial Assessments Act, 1836. But though the same word is used in the two Acts, it does not necessarily follow that it is used in the same sense. In *Boulter v. Kent J.J.* (*x*) it was held that the words "conviction or order" in s. 31 of the Summary Jurisdiction Act, 1879, were used in their strict technical sense for a decision following an information or complaint. And it has been expressly decided that an appeal against a rate to special sessions is not an information or complaint (*y*). Again, in a case in which the special sessions dismiss the appeal, making no alteration in the rate, and their decision is reversed by the quarter sessions, it is almost impossible to apply the direction of sub-s. (6) of s. 31 of the Summary Jurisdiction Act, 1879, that the clerk of the peace shall indorse on the conviction or order appealed against a memorandum of the decision of the Court of Appeal (*z*).

To what sessions the appeal lies.—By s. 6 of the Parochial Assessments Act, 1836 (*a*), the appeal is to be to "the next general sessions or quarter sessions" after recognizances are entered into. Although in some places "general sessions" are held which are distinct from "quarter sessions," it is submitted that if the "general sessions" happen to come first, the appellant is entitled to pass them by, and wait till the quarter sessions (*b*); the words in the Act, "general sessions" and "quarter sessions," being regarded as two expressions meaning the same thing, and applying only to "quarter sessions" strictly so called. It must be noticed that immediately after the words "general sessions or quarter sessions," the section speaks of costs "awarded by the justices at such quarter sessions" (without mentioning general sessions), as

(*x*) [1897] A. C. 556; see pp. 567, 568. The use of the words "conviction, order, determination, or other proceeding," in s. 33 proves that in *that* section, at all events, the word "order" cannot include every decision of a court of summary jurisdiction.

(*y*) *Wheeler v. Overseers of Birmingham* (1860), 29 L. J. M. C. 175 n; *supra*, p. 542.

(*z*) Compare the reasoning of Lord HERSCHELL, in *Boulter v. Kent J.J.*, [1897] A. C. 556, at p. 566.

(*a*) Set out in Appendix II., *infra*.

(*b*) *Cf. R. v. London J.J.* (1812), 15 East, 632, *infra*, p. 568.

though “quarter sessions” was a sufficient description of the sessions intended.

It seems that the appeal must be from the special sessions in a quarter sessions borough to the recorder sitting as the court of quarter sessions for that borough (*c*), and from the special sessions not within a quarter sessions borough to the quarter sessions for the county, notwithstanding s. 27 of the Poor Law Amendment Act, 1867 (*d*).

Notice of appeal from special sessions.—In the following paragraphs it is assumed that s. 31 of the Summary Jurisdiction Act, 1879, does *not* apply to an appeal from the decision of special sessions on a rating appeal (*e*).

By s. 6 of the Parochial Assessments Act, 1836 (*f*), the person impugning the decision of special sessions must (within fourteen days after the decision has been made) give notice in writing of his intention of appealing, and of the matter or cause of such appeal, “to the person or persons in whose favour such decision shall have been made.” In the case of an appeal by a ratepayer from a decision of special sessions, it seems clear that the persons entitled to notice are (1) the assessment committee, and (2) the overseers (or, in a rural parish, the parish council). And it has been held at quarter sessions (*g*), that failure to give notice to the parish council is a fatal objection to the hearing of an appeal from special sessions; though the same court held on the same day, that (in the case of an appeal against a rate direct to quarter sessions) the defect could be cured by entering the appeal and respiting it to the next sessions. These decisions imply that the directions of 17 Geo. 2, c. 38, s. 4 (*h*) (which require the justices to adjourn the appeal to the next sessions where reasonable notice has not been given), do not apply to appeals from special sessions; and this view is supported by *R. v. Tewkesbury J.J.* (*i*), in which it was said that the Parochial Assessments Act, 1836, s. 6, gave “a special remedy with special limitations.”

There is a difficulty about the length of notice to which the several respondents are entitled, and this difficulty may affect the question to what sessions the appeal must be taken. In s. 6 of

(*e*) See the Municipal Corporations Act, 1882, s. 165, and the Interpretation Act, 1889, s. 13 (14).

(*d*) *Vide infra*, pp. 566, 567.

(*e*) The reasons for this opinion are given, *supra*, pp. 543—545.

(*f*) See Appendix II., *infra*.

(*g*) *Hancock v. Bradford-on-Avon Union*, October 19th, 1897, *coram* Wilts quarter sessions (Lord LUDLOW, L.J., sitting as chairman). The writer is indebted for this information to the junior counsel for the respondents, who vouches for the accuracy of a short report of the case in the Poor Law Officers' Journal for November 5th, 1897.

(*h*) See Appendix II., *infra*; and as to the effect of that section in appeals direct to quarter sessions, *vide infra*, p. 574.

(*i*) [1903] 1 K. B. 39; *Ryde & Konstan's Rat. App.* (1894—1904) 312; *supra*, p. 540.

the Parochial Assessments Act, 1836, the directions as to recognizances (which are considered below) imply that the appeal should be entered at "the next general sessions or quarter sessions" (*k*) after the recognizances are entered into, and the section does not require any specific number of days' notice. But by s. 1 of the Quarter Sessions Act, 1849 (*l*), "in every case of appeal [with exceptions not now material] to any court of quarter sessions fourteen clear days' notice (*m*) of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or practice of any court or courts, to the contrary notwithstanding," etc. It seems clear that this section applies to the notice to be given to the overseers (or parish council as the case may be). It may, perhaps, be held that where the assessment committee are among the respondents, twenty-one days' notice must be given to them, under s. 1 of the Union Assessment Committee Amendment Act, 1864 (*n*); although that section appears to apply to an appeal direct to quarter sessions against a rate, but not to an appeal against a decision of special sessions. It is, perhaps, advisable (where it is possible to do so) to give twenty-one days' notice to the assessment committee.

Assuming that fourteen days' notice is necessary, there may not be time to give so long a notice for the "next general sessions or quarter sessions," after recognizances are entered into: in that case it becomes very difficult to determine whether the appellant is bound to enter his appeal at those sessions, although the appeal cannot then be tried owing to the insufficiency of the notice. If the decisions as to the entry of appeals direct to quarter sessions against a rate (*o*) can be treated as analogous, it may perhaps be held that the effect of 12 & 13 Vict. c. 45, s. 1 (requiring fourteen days' notice), is to render it necessary to construe the words "next general sessions or quarter sessions" in s. 6 of the Parochial Assessments Act, 1836, as meaning "the next practicable general sessions or quarter sessions at which an appeal can be effectually entered." An appellant will do well to avoid difficult questions of this kind by making up his mind beforehand whether to appeal or not, if the decision at special sessions goes against him.

Recognizances.—By s. 6 of the Parochial Assessments Act, 1836, the appellant, within five days after giving notice of appeal, must enter into recognizances before some justice of the peace

(*k*) As to the meaning of this phrase, *vide supra*, p. 545.

(*l*) 12 & 13 Vict. c. 45, commonly called Baines' Act. The section is set out at length in Appendix II.

(*m*) Fourteen days must intervene between the day on which the notice is given and the day on which the sessions are held: *vide infra*, p. 579, note (*x*).

(*n*) See Appendix II., *infra*.

(*o*) *Vide infra*, pp. 570—572, and see, especially, *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100; *infra*, p. 576.

with sufficient securities, "conditioned to try the appeal at the then next general sessions or quarter sessions of the peace which shall first happen," and to pay such costs as may be awarded. It is sufficient if the recognizance be entered into verbally within the five days, even though they be not perfected till long afterwards (*p*). It will be safest to assume that the justice who takes the recognizances should have before him the notice and grounds of appeal, and therefore that recognizances must be entered into *after* notice of appeal has been given (*q*). It is apparently not necessary that the recognizances should be entered into before one of the justices who constituted the special sessions who decided the case; nor even that the justice should be in the commission for the same county or borough, if the appellant resides elsewhere (*r*).

Who may appeal from special sessions, and on what grounds.—The right of appeal is given by s. 6 of the Parochial Assessments Act, 1836 (*s*), to "the person or persons impugning the decision"; but, having regard to the context, it seems that only those persons who are parties to the appeal to special sessions can appeal to quarter sessions. An assessment committee who have appeared as respondents at special sessions under s. 2 of the Union Assessment Committee Amendment Act, 1864, may appeal in the name of the guardians to quarter sessions (*t*). But it is at least doubtful whether an assessment committee, who took no steps to appear as respondents at special sessions, could appeal to quarter sessions (*u*).

Powers of quarter sessions as to costs on appeals from special sessions.—By s. 6 of the Parochial Assessments Act, 1836 (*x*), the quarter sessions upon hearing and finally determining an appeal from special sessions, "shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper." If this section be compared with the enactments giving power to deal with costs in appeals taken direct to quarter sessions (*y*), it will be seen that the words of this section are in some respects wider, and appear to

(*p*) *R. v. St. Albans JJ.* (1838), 8 A. & E. 932.

(*q*) See *R. v. Anglesey JJ.*, [1892] 2 Q. B. 29; decided on the Summary Jurisdiction Act, 1879, s. 31 (3); and *R. v. Cheshire JJ.* (1896), 60 J. P. 585.

(*r*) Cf. *R. v. Durham JJ.*, [1895] 1 Q. B. 801, decided on s. 31 of the Summary Jurisdiction Act, 1879.

(*s*) See Appendix II., *infra*.

(*t*) *Newtown and Llanidloes Union v. Pryce-Jones* (1881), 44 L. T. 310; *S. C. sub nom. R. v. Montgomeryshire JJ.*, 50 L. J. M. C. 52.

(*u*) Cf. *R. v. Salop JJ.* (1896), 12 T. L. R. 526; *infra*, p. 591, note (*v*); and see the remarks of A. L. SMITH, L.J., upon the question who are "parties" to a licensing appeal, in *R. v. London JJ.*, [1895] 1 Q. B. 616, at p. 634; but see also the comment thereon, in *R. v. Staffordshire JJ.*, [1898] 2 Q. B. 231.

(*x*) Set out in Appendix II., *infra*.

(*y*) *Vide infra*, pp. 597, 598.

enable the sessions in appeals under this section to give costs to an unsuccessful party, which they cannot do under the other enactments. Thus, under s. 6 of the Parochial Assessments Act, 1836, if an appellant obtained a merely nominal reduction, the sessions could apparently order him to pay the respondent's costs (z). It is submitted that the powers given by Baines' Act (12 & 13 Vict. c. 45), ss. 5, 6, to give costs of an appeal not entered or dismissed for want of jurisdiction, are cumulative, and may be exercised on appeals from special sessions (a).

Where the quarter sessions, on an appeal from special sessions, reverse the decision of the court below, they have jurisdiction not only to set aside the order made by the special sessions as to costs, but also to order the party who succeeded at special sessions to pay to the other party (who ultimately succeeds) his costs at special sessions, as well as at quarter sessions (b).

Other methods of reviewing decisions of special sessions.—

If the special sessions wrongly refuse to hear an appeal (on the ground that it is brought too late, or that they have no jurisdiction to hear it) the proper course appears to be to apply to the King's Bench Division for a mandamus to hear the appeal, and not to appeal to the quarter sessions: for there cannot, it seems, be an appeal until there is some decision on the merits to appeal from (c). It is of course open to the appellant to accept the decision of the special sessions on the preliminary question as correct, and (if it is not too late) to enter an appeal against the rate on the merits direct to quarter sessions, as from the decision of the assessment committee.

It is very difficult to say whether an appellant, who is dissatisfied with the decision of the special sessions, can (without appealing from that decision under s. 6 of the Parochial Assessments Act, 1836) enter an appeal direct to the quarter sessions as from the decision of the assessment committee under 17 Geo. 2, c. 38, s. 4, and s. 1 of the Union Assessment Committee Amendment Act, 1864 (d). The Parochial Assessments Act, 1836, by s. 7, expressly provides that "nothing in this Act contained shall be construed to deprive any person of the right to appeal against any rate to any

(z) *Cf. London and North Western Rail. Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 229, decided by the London quarter sessions under s. 39 of the Valuation (Metropolis) Act, 1869. As to the power to give costs to an unsuccessful appellant, see pp. 689, 690, *infra*.

(a) *Vide infra*, p. 599.

(b) *R. v. Cornwall JJ.*, [1903] 2 K. B. 178; *Ryde & Konstam's Rat. App.* (1894—1904), 316.

(c) Compare the decision of the assessment sessions on the corresponding sections of the Valuation (Metropolis) Act, 1869, in *Hayes v. Holborn Union*, Ryde's Rat. App. (1886—1890), 199.

(d) On the corresponding provisions of the Valuation (Metropolis) Act, 1869, ss. 19, 32, the assessment sessions held that the appellant must proceed by way of appeal from the decision of the special sessions: *Bellamy v. St. Olave's Union* (1885), Ryde's Met. Rat. App. 401.

court of quarter sessions” ; and it may be said that this proviso over-rides the enactment in s. 6, that the decision of special sessions “ shall be binding and conclusive on the parties ” unless there is an appeal against it. On the other hand, it may be said that the appellant (who has elected to go first to special sessions) is deprived of his right of appeal to quarter sessions, not by reason of anything contained in the Act of 1836, but by the exercise of the option given him by that Act to select his tribunal ; and that it is anomalous that the decision of an inferior court, without being appealed against, should be overruled by the decision of a superior court.

Without saying that, after an appeal to special sessions, the right of appeal against the rate direct to quarter sessions, as from the decision of the assessment committee, is taken away, it is obvious that it is safer to appeal as from the special sessions in the manner directed by s. 6 of the Parochial Assessments Act, 1836.

CHAPTER XXIX.

APPEAL AGAINST A RATE TO QUARTER SESSIONS.

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Preliminary.—By far the greater number of decisions with reference to the law of rating have been given in proceedings begun by means of an appeal to quarter sessions against the rate. The right of appeal to the “general quarter sessions” (without any restrictions as to the time for appealing) was given by s. 5 of the Statute of Elizabeth; the Poor Relief Act, 1743 (*a*), limited the right of appeal to the “next quarter sessions,” to this extent repealing the Statute of Elizabeth (*b*); by judicial decisions the word “next” has been construed to mean “the next practicable sessions at which an effectual appeal could be lodged” (*c*), and, as will be seen hereafter, the “next practicable sessions” are at the present day not necessarily the next after the making of the rate. The Poor Relief Act, 1743, by s. 6, gave power to the sessions to amend the rate without quashing it altogether; and this power of amendment was extended by the Poor Rate Act, 1801 (*d*), so as to include alterations of the assessments of persons other than the appellant.

The right of appeal to special sessions, and thence to quarter sessions, given by ss. 6 and 7 of the Parochial Assessments Act, 1836, has been already considered (*e*).

We have already seen (*f*) that the right of appealing against a rate (on questions of value or on any other question) is not taken away by the final approval of the valuation list by the assessment committee. And, save that an objection to the valuation list before an assessment committee is now made a condition precedent to an appeal against a rate, the right of appeal is not affected by the Union Assessment Acts *outside the metropolis*.

It must be noticed that outside the metropolis there is nothing to correspond to the quinquennial system of revaluation, which is in force within the “metropolis,” under the Valuation (Metropolis) Act, 1869. Outside the “metropolis” an appeal can be entered against every succeeding rate as it is made (*g*), even though the quarter sessions may have just dismissed an appeal brought upon the same grounds against the last preceding rate. And an appel-

(*a*) 17 Geo. 2, c. 38, s. 4. The Acts here referred to are set out in Appendix II., *infra*.

(*b*) *R. v. Worcestershire JJ.* (1816), 5 M. & S. 457.

(*c*) *R. v. Sussex JJ.* (1812), 15 East, 206; *vide infra*, p. 572.

(*d*) 41 Geo. 3, c. 23, s. 1: see Appendix II., *infra*.

(*e*) *Vide supra*, pp. 538—550.

(*f*) *Vide supra*, pp. 532, 533.

(*g*) *R. v. Essex JJ.*, [1902] 1 K. B. 180.

lant, after appealing unsuccessfully to the quarter sessions on a question of value, may appeal against the next rate, on the same question of value, to the special sessions under s. 6 of the Parochial Assessments Act, 1836.

Who may appeal.—By s. 4 of the Poor Relief Act, 1743 (*h*), the right of appeal is given to any person who is “aggrieved” (*i*) by any rate, or who has any material objection to any person being put on or left out of such rate, or to the sum charged on any person therein. The language used seems wide enough to include the owner as well as the occupier of the property, the rating of which is objected to, where the owner has agreed with the occupier to pay the rates; at all events, it would seem to include the owner of property let for a term not exceeding three months, the tenant of which is entitled to deduct the rates from his rent under s. 1 of the Poor Rate Assessment and Collection Act, 1869 (*k*), as the owner in such a case is directly interested in the amount of the assessment on his property. By s. 13 of the same Act, where the owner has become liable for the rates, he is expressly given the same right of appeal as if he were the occupier. This provision seems to have been inserted to make clear what might otherwise have been doubtful, and not to give the owner a right of appeal which he would not otherwise have possessed.

The conditions precedent to an appeal.—By s. 1 of the Union Assessment Committee Amendment Act, 1864, no person can appeal to any sessions (whether quarter sessions or special sessions) against a poor rate made in conformity with the valuation list (*l*) approved of by the assessment committee, unless he shall have given to the assessment committee notice of objection to the valuation list, and shall have failed to obtain such relief in the matter as he deems just: which objection, after notice given at any time, the committee shall hear, with full power to call for and amend the list, although the same has been finally approved of (*m*).

This enactment does not merely require that the appellant shall give to the assessment committee notice of objection to the valuation list before his appeal is actually heard by the quarter sessions: it makes the giving of such a notice of objection, and the failure to obtain relief a necessary condition precedent to the

(*h*) 17 Geo. 2, c. 38: see Appendix II.

(*i*) *Vide supra*, p. 523, as to the meaning of the word “aggrieved” in this connection.

(*k*) 32 & 33 Vict. c. 41: see Appendix II.; see also p. 61, *supra*.

(*l*) Where the rate is not made in accordance with the valuation list, but is made under a local Act, and is based on a different valuation, this provision does not apply: *R. v. Price* (1893), 62 L. J. M. C. 71; *Cf. R. v. Middlesex JJ.* (1872), L. R. 7 Q. B. 653.

(*m*) The section is set out in Appendix II.

exercise of the right of appeal at all; and non-compliance with the section is a fatal defect in the proceedings, which cannot be cured (as in the case of a defective notice of appeal) by amendment, or by entering the appeal at one quarter sessions and respiting it to the next sessions (*n*), in order to supply the defect in the meantime.

It is important to observe the distinction drawn by s. 1 of the Union Assessment Committee Amendment Act, 1864, between *notice of objection* to the valuation list, and *notice of appeal* to special sessions or quarter sessions against the rate.

One effect of interposing the giving of notice of objection to the valuation list (as an intermediate step before appealing to quarter sessions) is to alter the construction of s. 4 of the Poor Relief Act, 1743 (*o*), which required the appellant to appeal to “the *next* general or quarter sessions” (after the making of the rate). This was long ago construed as meaning “the next practicable sessions at which an effectual appeal could be lodged” (*p*); and the section must now be construed as meaning “the next practicable sessions after the appellant has put himself in a position to appeal by complying with s. 1 of the Union Assessment Committee Amendment Act, 1864” (*q*). Having regard to the difficulty which sometimes arises in determining what, in the existing state of the law, are the “next practicable sessions” to which the appeal must be taken, an objector will do well to consider, *before* the committee hear his objection, what is the minimum of relief which he will be content to accept; in order that when the decision is given he may at once take the necessary steps towards appealing, if he desires to do so.

Under s. 18 of the Union Assessment Committee Act, 1862, a ratepayer might give notice of objection to a valuation list before its final approval, and within twenty-eight days after notice of deposit of the list by the overseers (*r*); under s. 1 of the Union Assessment Committee Amendment Act, 1864, the notice of objection may be given “at any time.” This provision was perhaps mainly intended to enable a ratepayer to object to a valuation list where some time had elapsed since its final approval, and meanwhile the value of property had altered. The effect of the latter section, however, is (in many cases at any rate) to get rid of the necessity of observing the time prescribed by s. 18 of the Act of 1862, and to enable a ratepayer to object to a valuation list immediately after it has been finally approved by the assessment committee, even though he may have purposely neglected to make an objection before the final approval of the list.

(*n*) *Vide infra*, pp. 574—576. (*o*) 17 Geo. 2, c. 38: see Appendix II., *infra*.

(*p*) *R. v. Sussex JJ.* (1812), 15 East, 206: *vide infra*, pp. 571, 572.

(*q*) See *R. v. Biggleswade Union* (1869), 21 L. T. 494.

(*r*) *Vide supra*, p. 524.

The making of an objection as a condition precedent to an appeal.—It must specially be noticed that the proviso in s. 1 of the Union Assessment Committee Amendment Act, 1864, which makes an objection to the valuation list before the assessment committee a condition precedent to an appeal, applies only to an appeal “against a poor rate *made in conformity with the valuation list approved of*” by the committee. If, therefore, a rate is not made in conformity with such list, it appears either that the proviso does not apply at all, or that it does not apply to an appeal, the sole ground of which is the failure to make the rate in conformity with such list.

As the cases decided on s. 1 of the Union Assessment Committee Amendment Act, 1864, are not easily reconciled, it may be convenient to set them out somewhat fully after first stating the propositions which they seem to the writer to establish. It must be noticed that all of the cases, though decided with reference to appeals to quarter sessions, apply also to appeals to special sessions, as s. 1 of the Act of 1864 applies to both kinds of appeal.

1. The notice of objection to the valuation list must be given, and relief must be definitely refused before the appellant can appeal, so that if the committee delay holding a meeting (*s*), or hold a meeting and adjourn the consideration of the objection (*t*), an appeal before their decision is given is premature.

2. As soon as the notice of objection has been given, and the objector has failed to obtain relief, he must appeal to the *then* next practicable quarter sessions; and if, by making a second objection which is unnecessary, the appellant delays his appeal until a later sessions, the appeal will then be too late (*u*).

3. If the appellant objects to the valuation list and fails to obtain relief *before* the rate is made, as soon as the rate is made he *may* appeal to the next quarter sessions without giving a fresh notice of objection to the list, and he *must* appeal (if at all) to those sessions (*x*).

4. But if an appellant, having given notice of objection to the list and failed to obtain relief, thereupon appeals against a rate, and afterwards a second rate is made, a fresh notice of objection to the list must be given before appealing against the second rate (*y*).

(*s*) *R. v. Biggleswade Union* (1869), 21 L. T. 494.

(*t*) *R. v. Bedminster Union* (1876), 1 Q. B. D. 503.

(*u*) *R. v. Wiltshire JJ.* (1879), 4 Q. B. D. 325.

(*x*) *R. v. Wiltshire JJ.*, *ubi supra*; *R. v. Denbighshire JJ.* (1885), 15 Q. B. D. 451. The decision in *R. v. Derbyshire JJ.* (1871), 25 L. T. 43, *infra*, pp. 556, 557, may at first sight seem to conflict with the latter part of the proposition stated above; *sed vide infra*, p. 557, note (*c*).

(*y*) *R. v. Great Western Rail. Co.* (1869), L. R. 4 Q. B. 323; *R. v. Essex JJ.*, [1902] 1 K. B. 180. The decision in *R. v. Great Western Rail. Co.* was doubted in *R. v. Wiltshire JJ.* and *R. v. Denbighshire JJ.*, *ubi supra*, but the decision in *R. v. Essex JJ.* shows that all the cases are reconcilable: *vide infra*, p. 558.

5. If an objector obtains some relief, but not as much as he thinks just, he is entitled to appeal without giving a fresh notice of objection (*z*); and from this it seems to follow that he *must* appeal (if at all) to the next practicable sessions after the committee have given their decision, and cannot extend the time for appealing by making a second objection unnecessarily.

6. An objection to the list must apparently be made before appealing, even when the ground of the objection, and of the appeal, is one on which the committee can give no relief (*a*).

Examination of the cases decided as to the making of objections.—In the preceding paragraph the effect of the decided cases has been briefly summarised; it is now proposed to give the special circumstances with reference to which each case was decided.

In *R. v. Great Western Rail. Co. (b)*, the valuation list was approved on April 24th, 1867: the rate was made on May 15th; the appellants gave notice of objection, and (failing to obtain relief) appealed to quarter sessions held on October 11th, 1867, the only ground of appeal being that the appellants were not rateable for certain wharfage dues. The sessions confirmed the rate, subject to a case for the Queen's Bench. A second rate was made on October 19th, 1867, and the appellants, without giving a second notice of objection, gave the committee twenty-one days' notice of appeal, and appealed to quarter sessions held on December 31st, 1867. It was held by the Queen's Bench that a second notice of objection to the valuation list should have been given before appealing against the second rate.

This case lays down the rule that one objection can be made the foundation of one appeal only; that a second appeal against a second rate must be preceded by a second objection, not merely when the appeal relates to questions of value which may have changed since the making of the first rate, but even when the appeal is based on the same question of law, and no change of circumstances affecting that question is alleged to have taken place. It will be seen that, although the decision has been seriously doubted, it is confirmed by the most recent decision (*c*).

In *R. v. Derbyshire J.J. (d)*, the valuation list was deposited on July 9th, 1870, notice of objection was given on July 14th, the committee met on July 25th, and (no one appearing to object),

(*z*) *R. v. Denbighshire J.J.* (1885), *ubi supra*; *R. v. Derbyshire J.J.* (1871), 25 L. T. 43.

(*a*) *R. v. Lancashire J.J.* (1874), 43 L. J. M. C. 116; *S. C. sub nom. Salford Union v. Salford J.J.*, 38 J. P. 361; 30 L. T. 403; *Williams v. Bedminster Union* (1874), 39 J. P. 117; 30 L. T. 710. But see, however, *R. v. London and North Western Rail. Co.* (1876), 46 L. J. M. C. 102, *infra*, p. 560.

(*b*) (1869), L. R. 4 Q. B. 323.

(*c*) See *R. v. Wiltshire J.J.*, *R. v. Denbighshire J.J.*, and *R. v. Essex J.J.*, *infra*, pp. 557, 558.

(*d*) (1871), 25 L. T. 43.

approved the list on the same day. The rate based on the list was made on August 13th, and on the following day the appellants gave notice to the parish officer of their intention to dispute their liability to pay the amount at which they were assessed (*e*). The committee appointed October 3rd, for hearing the objection, and on that day reduced the list, and the rate was amended. The appellants being still dissatisfied, gave notice of appeal, which the sessions refused to hear on the ground that the appellants had not "failed to obtain relief," and should have given notice of objection to the list as amended. The Queen's Bench held that no fresh notice of objection to the list as amended was necessary: if this were so, it might be necessary for the appellants to go through the same process of objecting a great number of times (if the committee granted a small reduction every time).

In *R. v. Wiltshire J.J.* (*f*), the appellants gave notice of objection (under s. 18 of the Union Assessment Committee Act, 1862) before the final approval of the valuation list. The objection was heard on May 22nd, 1878, and overruled. The rate was made on May 23rd. The next meeting of the assessment committee was on June 12th, and the Midsummer sessions were held on July 2nd. If, therefore, it was necessary to go before the committee again, it would have been difficult, if not impossible, to give the twenty-one days' notice of appeal required by s. 1 of the Union Assessment Committee Amendment Act, 1864, in time for the Midsummer sessions. The appellants gave a second notice of objection to the list on July 31st, which was heard and again overruled: they then gave notice of appeal for the Michaelmas sessions. It was held that the appeal was too late, because the appellants were in a position to appeal to the Midsummer sessions, directly the rate was made: that when a second rate was not in question, a second objection to the list was unnecessary; and *R. v. Great Western Rail. Co.* (*g*) was distinguished on the ground that there two rates were appealed against, and in such a case, two notices of objection might be necessary. But COCKBURN, C.J. (who was a party to the decision in both cases), said (*h*): "I own that the discussion in the present case has somewhat shaken my confidence in the correctness of our decision in that case, but our decision in the present case does not overrule it, for the two cases are clearly distinguishable."

In *R. v. Denbighshire J.J.* (*i*), the valuation list was approved on January 12th, 1884; a rate was made on April 18th; in July

(*e*) The notice was apparently intended to be, and was accepted as, a notice of objection to the list. It should be noticed that as the objection to the appeal was based on the contention that it was brought too soon, the objectors precluded themselves from contending that it was too late on the ground that the proceedings in July amounted to a failure to obtain relief.

(*f*) (1879), 4 Q. B. D. 326.

(*g*) (1869). L. R. 4 Q. B. 323, *supra*, p. 556.

(*h*) *R. v. Wiltshire J.J.* (1879), 4 Q. B. D. 326, at p. 328.

(*i*) (1885), 15 Q. B. D. 451.

or August, the appellant gave notice of objection to the list, which was heard on September 4th, and on September 6th he received notice that his assessment had been slightly reduced. The next quarter sessions were held on October 16th, but no appeal was entered against the April rate. The first rate based on the list as amended was made on November 4th, and the appellant (without giving a fresh notice of objection to the list) appealed to the next quarter sessions held on January 8th, 1885. It was held that to make a second objection before the assessment committee was unnecessary, and would be the "idlest form imaginable" (*k*), and Lord COLERIDGE, C.J., said, "As the Act has not directed that it shall be done every time, it would be enough to do it once for all (*l*). If he has once gone to the assessment committee, I am clearly of opinion that the conditions precedent of the Act have been complied with, and that the quarter sessions should have heard the appeal." And the court appeared to regard *R. v. Great Western Rail. Co.* (*m*), as overruled by *R. v. Wiltshire J.J.* (*n*) and *R. v. Derbyshire J.J.* (*o*).

In *R. v. Essex J.J.* (*p*) the first rate in question was made on May 8th, 1900; on June 23rd notice of objection was given; on September 5th the objection was heard; notice of appeal to special sessions was given, and the appeal was heard on November 5th, the appellants' assessment being slightly reduced. A second rate had been made on October 26th, against which no objection or appeal was made. A third rate was made on May 4th, 1901, and notice of appeal against this rate to quarter sessions was given on June 12th, without making any fresh objection to the valuation list before the assessment committee. It was held that although the appellants had objected before the assessment committee before appealing against the first rate, it was a condition precedent that they should again go before the committee before appealing against a subsequent rate. Lord ALVERSTONE, C.J., held that there was no real discrepancy between the cases above referred to, and that the substance of the decision in *R. v. Great Western Rail. Co.* (*q*), viz., that a fresh notice of objection must be given before every appeal against a fresh rate, was not touched by any subsequent case; that *R. v. Wiltshire J.J.* (*r*) was quite consistent in deciding that it is not necessary to make an objection twice in respect of the same rate; and that *R. v. Denbighshire J.J.* (*s*) merely showed

(*k*) See 15 Q. B. D., at pp. 454, 456.

(*l*) The decision in *R. v. Essex J.J.*, [1902] 1 K. B. 180, *infra*, shows that this sentence must be read with reference only to the particular facts, and not as applying to several appeals against several rates.

(*m*) (1869), L. R. 4 Q. B. 323, *supra*, p. 556.

(*n*) (1879), 4 Q. B. D. 326, *supra*, p. 557.

(*o*) (1871), 25 L. T. 43, *supra*, p. 556.

(*q*) (1869), L. R. 4 Q. B. 323; *supra*, p. 556.

(*r*) (1879), 4 Q. B. D. 326; *supra*, p. 557.

(*s*) (1885), 15 Q. B. D. 451; *supra*, p. 557.

(*p*) [1902] 1 K. B. 180.

that where an appellant has made an objection, he can appeal against the next effective rate made *after* the decision on his objection, without objecting a second time. It was also pointed out (*t*) that the quarter sessions on hearing the appeal cannot go into the question whether the circumstances have changed since the objection before the committee was made and decided on; and that they have only to decide whether, on the grounds stated in the notice of appeal, the appellant is over-rated.

The result of the decision in *R. v. Essex JJ.* (*u*) appears to be that the judgments in the earlier cases above referred to, and especially the judgment in *R. v. Denbighshire JJ.* (*v*), must be read with reference to the particular facts of each case, and not as laying down general propositions; and that, when so read, all the cases are consistent with one another.

Objections on grounds which the assessment committee cannot deal with.—There is some doubt whether it is necessary to give notice of objection to the valuation list before appealing, where the ground of objection is one on which the assessment committee can give no relief, *e.g.*, where the appellant alleges that he is not in occupation or that he is not rateable at all. The better opinion appears to be that in such a case notice of objection is necessary, and the weight of authority is in favour of this view. In *R. v. Lancashire JJ.* (*y*), the appellants (who were bill-posters) were rated as occupiers of advertising stations, and without giving notice of objection to the list, appealed to quarter sessions on the ground that they were not occupiers of any rateable property. It was argued that an objection on this ground could not have been made under s. 18 of the Union Assessment Committee Act, 1862, or under s. 1 of the Union Assessment Committee Amendment Act, 1864; but the Queen's Bench held that, before appealing to quarter sessions the objection must be made, even though the committee had no power to deal with it. Again, in *Williams v. Bedminster Union* (*z*), the appellant gave notice of objection to a valuation list on the ground that he was over-rated for a toll-house; and, failing to obtain relief, appealed to quarter sessions, adding as a further ground of appeal that he was not rateable for the tolls. It was held that the sessions had no jurisdiction to deal with the latter ground, because the particular objections raised on appeal must previously be brought before the assessment committee, even though it was apparently assumed that the committee could not have dealt with the objection.

(*t*) [1902] 1 K. B., at pp. 184, 187.

(*u*) [1902] 1 K. B. 180.

(*v*) (1885), 15 Q. B. D. 451; *supra*, p. 557, 558.

(*y*) (1874), 43 L. J. M. C. 116; *S. C. sub nom. Salford Union v. Salford JJ.*, 30 L. T. 403; 38 J. P. 361.

(*z*) (1874), 30 L. T. 710. *Cf. R. v. Essex JJ.*, [1902] 1 K. B. 180, where a similar question was raised, but not decided.

On the other hand, in *R. v. London and North Western Rail. Co. (a)*, where the appeal raised a question as to exemption from rating, which did not affect the valuation stated in the list, it was held that, the making of an objection being useless, it was not necessary to make it. It must, however, be noticed that in this case neither *R. v. Lancashire J.I.* nor *Williams v. Bedminster Union* was cited; and the point as to the necessity of making an objection was apparently not very strenuously urged, the respondents relying mainly on another point which went to the merits.

Objections to the assessment of a third party.—There is some doubt upon the question whether under s. 1 of the Union Assessment Committee Amendment Act, 1864, an objection can be made to the assessment of persons other than the objector, *after* the list has been finally approved: there is, of course, no doubt that such an objection can be made under s. 18 of the Union Assessment Committee Act, 1862, *before* the list has been finally approved, because that section expressly provides for such an objection. In *Reigate Union v. South Eastern Rail. Co. (b)*, the court appear to have adopted (as the ground of their decision) the argument that under s. 1 of the Act of 1864 an objector could not object to the assessments of other persons. But the court appear to have overlooked this difficulty: it is clear that, before the Act of 1864 was passed, a ratepayer could appeal to quarter sessions against the assessments of other persons. The Act of 1864 does not take away any right of appeal, but provides that “no person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list, unless he shall have given to the committee notice of objection to the list.” If, since the passing of the Act of 1864, a ratepayer wishes to appeal against the under-assessment of other persons, he must apparently comply with s. 1 of the Act of 1864, since there appears to be nothing in the section to except such an appeal from the general rule: if so, it is submitted that the section impliedly empowers the appellant to give the notice of objection, and empowers the assessment committee to hear the objection, and, if necessary, to alter the list. In *R. v. Kent J.I. (c)*, it appears to have been assumed by the Queen’s Bench that an objection to the under-assessment of third parties could be made under s. 1 of the Act of 1864. It is true the point was not disputed in argument, but it is singular that it should have been overlooked, if it was a good one; for it would have furnished a short answer to the rule for a *mandamus* which had been granted.

(a) (1876), 46 L. J. M. C. 102.

(b) [1894] 1 Q. B. 411.

(c) (1870), L. R. 6 Q. B. 132.

It must, however, be noticed that *R. v. Langriville (d)*, rather supports the view that such an objection could not be made under s. 1 of the Act of 1864, for such an objection involves the giving of "notices," viz., to the assessment committee, the overseers, and the third party (*e*).

Within what time the notice of objection may be given.—

By s. 1 of the Union Assessment Committee Amendment Act, 1864 (*f*), the notice of objection may be given "*at any time*." The giving of such a notice is made a condition precedent to the entry of an appeal, and therefore it may, at first sight, appear that the Act of 1864 has, in effect, entirely repealed the requirement of s. 4 of the Poor Relief Act, 1743 (*g*), that the appeal shall be to the "next" sessions. It is submitted, however, that the words "at any time" must be read with some limitation. It could hardly be contended, for instance, that if the first rate based on a new valuation list were made on January 1st, 1900, a ratepayer could wait till January, 1902, and then object that the list was wrong *ab initio*, and on failing to obtain relief appeal to the then next sessions held at Lady Day, 1902, against a rate made on January 1st, 1900. On the other hand, it has never been held that the appellant is bound to use all possible diligence in giving notice of objection, and it is believed that in practice many cases have occurred in which no objection to the hearing at quarter sessions has been taken by the respondents, where the appellant has been guilty of delay in giving notice of objection, whereby it has become impossible to enter an appeal at the next sessions after the making of the rate, which would have been possible had the appellant served his notice of objection to the valuation list soon after the rate had been made (*h*). It may, perhaps, be suggested that, having regard to the context, the words "at any time" were inserted in s. 1 of the Union Assessment Committee Amendment Act, 1864, as meaning "at any stage in the proceedings connected with the making of the valuation list, and either before or after its approval." If the section means that the objector may give notice of objection "at any reasonable time" after the making of the rate, it may be contended that (having regard to the law as it stood under the Poor Relief Act, 1743, s. 4) it is not reasonable for an objector to delay giving notice of objection until after the making of another rate, which may have been calculated on the assumption that the first rate would be paid in full. It is usual for the

(*d*) (1884), 14 Q. B. D. 83.

(*e*) But see the remarks on this case, *infra*, p. 562.

(*f*) Set out in Appendix II., *infra*.

(*g*) 17 Geo. 2, c. 38 : see Appendix II.

(*h*) See, for example, *R. v. Great Western Rail. Co.* (1874). 38 J. P. 822, *infra*, p. 565, where notice of objection to the list was not given until more than four months after the making of the rate, and no objection was made to the hearing of the appeal on the ground that it was too late.

appellant not to delay giving notice of objection to the valuation list until after the expiration of the period for which the rate is made (*i*). And it is advisable for him to give notice of objection as soon as he hears of the rate, because if the overseers apply for a distress warrant to enforce payment, the justices (on the hearing of the summons) will not be bound to withhold, and perhaps will not be justified in withholding, the warrant, in order to allow time for the objection to the list to be heard (*k*).

How and to whom notice of objection is to be given.—The Union Assessment Committee Amendment Act, 1864, s. 1, provides that the committee shall hear the objection “after notice given at any time in the manner prescribed by” the Union Assessment Committee Act, 1862. The manner of giving notice to the assessment committee is provided for by ss. 18 and 42 of the Act of 1862 (*l*). In *R. v. Langrville* (*m*) it was held that the words “after notice given at any time” (being in the singular number) “applied solely to the notice to be given by the objecting party to the committee” under s. 18 of the Act of 1862; and that a notice of the meeting of the committee (directed by s. 19 of that Act to be given to the overseers) was not necessary in the case of objections made under s. 1 of the Act of 1864. The judges, however, either overlooked, or attached no importance to, the fact that s. 18 of the Act of 1862 itself requires two notices to be given, viz.: (1) to the assessment committee, and (2) to the overseers. This difficulty may perhaps be met by saying that, although notice is to be given to two bodies of persons, it is one and the same notice. Whether this view be right or wrong, it is advisable for an objector to assume that under s. 1 of the Act of 1864, notice both to the assessment committee and to the overseers was necessary. As far as the writer’s experience goes, it has always been the practice to serve the overseers.

There is a farther difficulty, viz., whether (assuming it to have been formerly necessary to serve the overseers) the Local Government Act, 1894, has made it now necessary (or advisable) to serve notice on the parish council, or some other authority, in lieu of, or in addition to the overseers: this point has been already considered (*n*).

Assuming that objection to the under-assessment, or omission, of persons other than the objector can be made under s. 1 of the Union Assessment Committee Amendment Act, 1864 (*o*), it seems

(*i*) The decision in *R. v. Great Western Rail. Co.* (1874), 38 J. P. 822, perhaps implies that notice of objection must be given within this period.

(*k*) See *R. v. Handsley* (1881), 7. Q. B. D. 398. See also the remarks on “Amendment of List and Rate,” *infra*, p. 564.

(*l*) See Appendix II., *infra*.

(*n*) *Vide supra*, p. 525.

(*m*) (1884), 14 Q. B. D. 83.

(*o*) As to this point, *vide supra*, p. 560.

desirable and perhaps absolutely necessary to give to such persons notice of the objection.

What the notice of objection must specify.—By s. 18 of the Union Assessment Committee Act, 1862, in the case of an objection so the valuation list *before* it is finally approved, the notice of objection must specify the grounds of objection. This provision apparently applies to an objection made under s. 1 of the Union Assessment Committee Amendment Act, 1864: for it has been held that the particular objections to be raised on the appeal to the sessions must previously be brought before the committee: and an appellant cannot rely at the sessions on a ground not specified in the notice of objection to the list (*p*). It is not necessary under the Union Assessment Acts, as is the case within the “metropolis” under the Valuation (Metropolis) Act, 1869, s. 11 (*q*), that the notice of objection should specify the correction desired.

The hearing of objections.—The Act does not fix any limit of time within which the meeting to hear the objection must be held: and any delay (*r*) on the part of the committee cannot defeat the objector’s right of appeal, as an appeal to the next practicable session after the committee have decided on the objection will be in time (*s*), notwithstanding the requirement of 17 Geo. 2, c. 38, s. 4 (*t*).

The Act of 1864 does not expressly provide for notice being given to the objector of the time and place of meeting, but it is believed to be the common, if not the invariable, practice for the committee to give such notice.

Where a time is fixed for the meeting, at which the objector cannot attend, the best course to pursue is to send an agent to ask for an adjournment, and (if this is refused) to formally object at the meeting by reading the written notice of objection. This would be sufficient foundation for an appeal to the sessions, without offering evidence in support of the objection (*u*): whereas if the objector’s agent withdraws the objection, or says he is unable to deal with it, it may be difficult to say whether the objector has “failed to obtain relief,” and whether the time for appealing has begun to run or not.

(*p*) See *Williams v. Bedminster Union* (1874), 30 L. T. 710, *supra*, p. 559. See also *R. v. Lancashire JJ.* (1874), 43 L. J. M. C. 116, *supra*, p. 559, and *R. v. Essex JJ.*, [1902] 1 K. B. 180; in the latter case the point was raised, but not decided, and Lord ALVERSTONE, C.J., expressed some doubt about it. Compare also *R. v. London JJ.*, [1897] 1 Q. B. 433; *infra*, p. 636; and *R. v. Suffolk JJ.* (1818), 1 B. & Ald. 640, at p. 645, 646.

(*q*) *Vide infra*, p. 636.

(*r*) As to the steps to be taken in the event of a refusal to hear altogether, *vide infra*, p. 564.

(*s*) *R. v. Biggleswade Union* (1869), 21 L. T. 494.

(*t*) See Appendix II., *infra*.

(*u*) *R. v. Essex JJ.* (1882), 46 J. P. 724, *supra*, p. 526.

The objector need not appear in person before the committee, but may appear by any agent, who need not necessarily be either surveyor, counsel, or solicitor (*x*). He is not bound to give evidence in support of his objection (*y*), though a refusal to give evidence (if he is able to do so) may affect the question of costs at quarter sessions (*z*). The assessment committee have no power to administer an oath, or to make any order as to costs.

Failure to obtain relief.—If the assessment committee, after hearing an objection, grant some relief, but not as much as the objector thinks just, he is entitled to appeal (*a*). But an objector cannot be said to have “failed to obtain relief” within s. 1 of the Union Assessment Committee Amendment Act, 1864, where the committee delay holding a meeting, and until the meeting is held, the objector cannot appeal (*b*). In *R. v. Bedminster Union* (*c*), where the committee held a meeting and adjourned the consideration of the objection *sine die*, pending the decision of the Queen’s Bench on a special case stated on an appeal against a previous rate, which decision was expected to govern the present objection, and the appellant appealed to the sessions without waiting for the decision of the committee, it was held that the committee were right in adjourning, that the appeal was premature, in that the appellant had not “failed to obtain relief,” and that the sessions had no jurisdiction.

If the committee refuse altogether to hear an objection of which notice has been given, or unreasonably delay the hearing, it may be doubted whether an objector who has complied with all the conditions precedent which he has to perform can appeal to the sessions (on the ground that he has “failed to obtain relief”), or must apply for a mandamus to compel the committee to hear the objection. In *R. v. Bedminster Union* (*c*), BLACKBURN, J., appears to have been of opinion that the latter would be the proper course (*d*).

Amendment of list and rate by assessment committee and overseers.—The assessment committee on hearing an objection have full power to call for and amend the list (*e*), although it has

(*x*) *R. v. St. Mary Abbots, Kensington*, [1891] 1 Q. B. 378 ; Ryde’s Rat. App. (1891—1893), 276.

(*y*) *R. v. Essex JJ.* (1882), 46 J. P. 724, *supra*, p. 526.

(*z*) *Vide infra*, p. 600.

(*a*) *R. v. Denbighshire JJ.* (1885), 15 Q. B. D. 451, at p. 454, *supra*, p. 557 ; *R. v. Derbyshire JJ.* (1871), 25 L. T. 43, *supra*, p. 556.

(*b*) *R. v. Biggleswade Union* (1869), 21 L. T. 494.

(*c*) (1876), 1 Q. B. D. 503.

(*d*) In a recent case in the writer’s experience, a rule *nisi* for a mandamus to hear an objection was granted by the High Court, but the case was settled before the rule came to be argued, so that no definite decision was given.

(*e*) It has been suggested that where a ratepayer objects to his own assessment, the committee can, under s. 1 of U. A. C. A. Act, 1864, increase either the gross or rateable value, or both. But this seems very doubtful, and is not generally accepted

been approved and no subsequent (or supplemental) list has been transmitted to them : and if they amend the list they are to give notice to the overseers who must “thereupon alter their then current rate accordingly” (*f*). In *R. v. Great Western Rail. Co.* (*g*), the rate was made on December 9th, 1871 ; notice of objection was given on March 20th, 1872 ; on March 25th a distress warrant was granted : on March 30th the rate was paid in full ; on April 4th the objection was heard and the assessment in the valuation list was ordered to be reduced, which alteration was made on April 12th. The new overseers, who came into office on April 5th, 1872, refused to make the corresponding alterations in the rate made on December 9th, 1871. Notice of appeal against that rate was given on June 17th, 1872, the material ground of appeal being the refusal of the overseers to alter the rate in accordance with the alteration of the valuation list. It was held that “the then current rate” which the overseers were required to alter by s. 1 of the Act of 1864 was the rate current when the notice of objection was given, and that the excess overpaid must be refunded (*h*). But this case does not go to the length of deciding that an appellant, after payment of the rate without objection, may at any time subsequently give notice of objection to the list, and (on obtaining a reduction under a decision of the assessment committee) claim a return of the rate already paid. Apparently while an objection to the valuation list is pending, and before notice of appeal to sessions has been given, the overseers are entitled to recover the rate in full.

Provisions as to payment of rates pending an appeal, and as to repayment when the appeal is successful, are contained in ss. 1, 2, 7, 8, of the Poor Rate Act, 1801 (*i*).

Where a list has been amended under s. 1 of the Union Assessment Committee Amendment Act, 1864, it is not necessary that it should be re-deposited by the overseers under s. 21 of the Union Assessment Committee Act, 1862 (*k*).

As to the effect of an alteration of the valuation list on the contributions to the common fund of the union, see the Union Chargeability Act, 1865, s. 12 (*l*), and *Tynemouth Union v. Backworth Overseers* (*m*).

The alteration of the valuation list will, in an urban district, affect the current general district rate levied by the urban district

in practice. The committee could, of course, increase the assessment, where the objection is made *before* the final approval of the list, under s. 18 of the U. A. C. Act, 1862.

(*f*) See U. A. C. A. Act, 1864, s. 1, in Appendix II.

(*g*) (1874), 38 J. P. 822.

(*h*) There is no express provision for refunding in the Acts.

(*i*) 41 Geo. 3, c. 23, set out in Appendix II. : see also p. 583, *infra*.

(*k*) *R. v. Edmonds* (1874), L. R. 9 Q. B. 598.

(*l*) 28 & 29 Vict. c. 79, s. 12.

(*m*) (1888), 57 L. J. M. C. 53.

council, and a reduction of the value stated in the valuation list is a "sufficient cause for non-payment" of the general district rate in full, within s. 256 of the Public Health Act, 1875, and the magistrates ought to refuse to enforce a payment of the rate in full (*n*). Where a valuation list has been altered in consequence of a successful appeal against a poor rate, and a general district rate is amended accordingly, the six months' limitation, fixed by s. 11 of the Summary Jurisdiction Act, 1848, for the recovery of the general district rate as amended, runs from the date of the amendment, and not from the original making of the rate (*o*).

To what sessions the appeal lies—as to local jurisdiction.—

Assuming that the appellant does not desire to appeal to special sessions (*p*), to what sessions does the appeal lie? This involves questions as to local jurisdiction, and as to time (*q*).

As to local jurisdiction: by the Poor Relief Act, 1743, s. 4 (*r*), the appeal lies to "the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise" where the parish, township, or place lies (*s*).

Subject to the exceptions mentioned below, the general rule is that the appeal against a rate for a parish in a quarter sessions borough lies to the recorder sitting as sole judge of the quarter sessions for the borough; and the appeal against a rate for any other parish lies to the quarter sessions for the county, riding, liberty, etc., in which the parish lies (*t*).

Special provision for corporations or franchises having a small number of justices is made by the Poor Relief Act, 1743 (*u*), as amended by the Poor Law (Appeals) Act, 1820 (*v*). It is not very clear whether this statute applies to a borough where the quarter sessions are held before the recorder sitting as sole judge.

The Poor Law Amendment Act, 1867 (*y*), by s. 27 enacts that "where a union extends into several distinct jurisdictions, every matter, act, charge, or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally

(*n*) *Sheffield Waterworks Co. v. Mayor, etc. of Sheffield* (1885), 55 L. J. M. C. 40.

(*o*) *Ketton v. Sheffield Coal Co.*, [1901] 2 K. B. 26.

(*p*) As to when it is possible and advisable to appeal to special sessions, *vide supra*, p. 538.

(*q*) The questions as to time for appealing are considered *infra*, pp. 570—576.

(*r*) 17 Geo. 2, c. 38: see Appendix II., *infra*.

(*s*) The case of a parish extending into two counties is dealt with in s. 8 of 43 Eliz. c. 2: see Appendix II. For an instance of such a parish, see *R. v. Bridgewater* (1839), 10 A. & E. 711.

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 154, 162, 165. A parish within a borough having a separate commission of the peace, but no separate court of quarter sessions, is for this purpose to be treated as part of the county.

(*u*) 17 Geo. 2, c. 38, s. 5: see Appendix II. As to the effect of this section where some of the justices are interested, see *R. v. Essex JJ.* (1816), 5 M. & S. 513.

(*v*) 1 Geo. 4, c. 36, s. 1: see Appendix II., *infra*.

(*y*) 30 & 31 Vict. c. 106.

throughout the union." Now the assessment committee may appear in the name of the guardians as respondents to a rating appeal, and if they do so appear the costs of the appellant may be ordered to be paid by the guardians out of the common fund of the union (c). Moreover, if the appeal results in an alteration of the rate, the valuation list also must be altered, and this will affect the basis of contribution to the common fund of the union (a). It is submitted, therefore, that an appeal against a poor rate is within the words "every matter, act, charge, or complaint by which the guardians are affected, or in which they have an interest," used in s. 27 of the Poor Law Amendment Act, 1867, quoted above. If so, it appears that an appeal against the poor rate for a parish in a union may be taken to the quarter sessions having jurisdiction over any parish in the union. So that if the union extends into two counties (or into a county and a quarter sessions borough) an appeal against the rate for any parish in the union may be taken to the quarter sessions of either county (or the quarter sessions for the county or the borough). No doubt it is the more common practice to appeal to the sessions having jurisdiction over the particular parish for which the rate is made; but in *East and West Junction Rail. Co. v. Stratford-on-Avon Union* (b), where appeals were entered at the Warwickshire quarter sessions, in respect of a line of railway extending through several parishes in the same union, but in three different counties, after the appeals relating to parishes in the county of Warwick had been heard, objection to the jurisdiction over parishes in the other counties was taken by the respondents: the quarter sessions, after argument, overruled the objection, heard the appeals and reduced the rates, giving costs to the appellants; and no attempt was made to set aside the decision.

The two following cases, decided with reference to s. 27 of the Poor Law Amendment Act, 1867, may be referred to: in *R. v. Eaton* (c), the guardians of a union extending into the two counties of Rutland and Northampton summoned a person residing in Rutland before the justices of the county of Northampton, for offences under the Education Acts. It was held that s. 27 of the Poor Law Amendment Act, 1867, enabled the guardians to take proceedings against residents in any parish in the union before the justices of either county. It may be noticed that in such cases it was probably more convenient for the defendant to appear before the justices of his own county; but in the case of a rating appeal in respect of a line of railway, gasworks, or waterworks, extending

(c) See U. A. C. A. Act, 1864, ss. 2, 3, in Appendix II., *infra*.

(a) See U. A. C. Act, 1862, s. 30, in Appendix II.

(b) Not reported; decided at the Warwickshire quarter sessions on October 18th and 26th. and November 1st, 1898—from the writer's MS. notes.

(c) (1881), 8 Q. B. D. 158; 46 J. P. 229.

into more than one county, it would probably be more convenient for all parties that all appeals should be heard before one and the same tribunal.

In *R. v. Staffordshire J.J. (d)*, it was held that in the case of a union extending into two jurisdictions, an order for the removal of a pauper might be made by the justices of either jurisdiction; but that if the order were made by the justices of a quarter sessions borough, the appeal against that order must be taken to the borough quarter sessions; for "when once jurisdiction is given to particular justices, that jurisdiction, with all its incidents, must continue throughout the whole course of the proceedings arising upon any of the matters of complaint to which s. 27 refers" (*e*). From this decision it seems to follow that, if an appeal against a poor rate be taken to special sessions under s. 6 of the Parochial Assessments Act, 1836 (*f*), the appeal from special sessions lies, in a quarter sessions borough to the borough quarter sessions, and elsewhere to the county quarter sessions, notwithstanding s. 27 of the Poor Law Amendment Act, 1867.

General or quarter sessions.—The justices *may* hold as many sessions in the year as may be necessary, and all their sessions (other than special or petty sessions) are general sessions: they *must* hold four general sessions, at stated times, one in each quarter of the year, and these sessions are called quarter sessions, or more properly general quarter sessions. The quarter sessions, therefore, are a species only of general sessions; so that all quarter sessions are general sessions, but the converse is not true, for all general sessions are not quarter sessions (*g*).

The Poor Relief Act, 1743 (*h*), gives the right of appeal to the "next general or quarter sessions," and it has been held (*i*) that the word "general" is here used as equivalent to "quarter" (the two expressions meaning, in this clause, the same thing), so that in places where both "general" and "quarter" sessions are held, the appeal lies to the "quarter" sessions, and the appellant may pass by the "general" sessions if that happens to come first (*k*). Whether the decisions here referred to are open to doubt or not, it is suggested that they are not now likely to be overruled by any court, it being "inexpedient to interfere with a long course of

(*d*) (1872), L. R. 7 Q. B. 288.

(*e*) *Per* COCKBURN, C.J.: L. R. 7 Q. B., at p. 290.

(*f*) *Vide supra*, p. 538.

(*g*) This appears to be the combined effect of the commission of the peace and of the statutes relating to the holding of sessions: see *R. v. Mullaney* (1833), 6 C. & P. 96.

(*h*) 17 Geo. 2, c. 38, s. 4: see Appendix II.

(*i*) *R. v. London J.J.* (1812), 15 East, 632; followed *R. v. Middlesex J.J.* (1843), 4 Q. B. 807.

(*k*) A slightly different result would be arrived at if the section were construed as giving the appellant the option of appealing either to the next "general" or to the next "quarter" sessions.

practice supported by decisions which are not of very recent date" (l). It must, however, be noticed that in *Liverpool Gas Co. v. Everton (m)*, it was admitted by counsel, and assumed by the court, that intermediate sessions, held at uncertain dates by the Recorder of Liverpool (in addition to the four quarter sessions) must be taken as equivalent to quarter sessions, and that an appellant might be bound to enter his appeal at those sessions. But this case, in which neither *R. v. London J.J. (n)* nor *R. v. Middlesex J.J. (o)* was cited, and in which the point was not argued, can hardly be taken as overruling those decisions.

Dates for holding quarter sessions.—By 11 Geo. 4 & 1 Will. 4, c. 70, s. 35, the justices in every county, riding, or division for which quarter sessions of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first weeks after October 11th, December 28th, March 31st, June 24th respectively. By the Quarter Sessions Act, 1894 (p), the justices in general quarter sessions may, at any time, when it may appear desirable, for the purpose of not interfering with the assizes then next ensuing, fix or alter the time for holding the then next general quarter sessions, so as the sessions be held not earlier than fourteen days before, nor later than fourteen days after the week in which they would otherwise be held. It must be noticed that, though under the statutes above cited the time for holding the sessions is fixed, this merely means that the sessions must then begin, and does not take away the power of the sessions to adjourn the hearing beyond the week mentioned.

It must also be noticed that the Act 11 Geo. 4 & 1 Will. 4, c. 70, s. 35, above cited, does not apply to the holding of quarter sessions in a quarter sessions borough, where the practice is for the recorder to fix the dates (q).

In some counties special dates (and places) for holding quarter sessions by adjournment are fixed by statute (r). It is not proposed to deal with these cases in this volume.

Adjourned sessions.—In some counties it is the practice to hold adjourned sessions at a considerable interval of time after the commencement of the quarter sessions, and in some cases at different places in the county; and it is important to observe the distinction between such sessions held by adjournment, and "general

(l) *London County Council v. Erith and West Ham*, [1893] A. C. 562, at p. 599; Ryde's Rat. App. (1891—1893), 413, at p. 436. See also *R. v. London J.J.* (1846), 9 Q. B. 41, at p. 43, and *R. v. Eyre* (1856), 6 E. & B. 992, at p. 998; *infra*, p. 575.

(m) (1871), L. R. 6 C. P. 414.

(n) (1812), 15 East, 632.

(o) (1843), 4 Q. B. 807.

(p) 57 & 58 Vict. c. 6, s. 1.

(q) See Municipal Corporations Act, 1882, s. 165.

(r) See, for example, as to Hertfordshire, the County of Hertford and Liberty of St. Alban Act, 1874 (37 & 38 Vict. c. 45), ss. 9, 13, 18, 19.

sessions " which are original sessions, intermediate between, and independent of, the quarter sessions. Where quarter sessions are adjourned, not merely *de die in diem*, but over a considerable interval of time," the sessions are always considered in law as one day, to whatever period they may by accidental causes be extended" (*s*); and this rule holds good where the adjournment is to a different place in the county (*t*). If, therefore, on the first day of quarter sessions, the sessions are not "practicable sessions," the appellant is not bound to enter his appeal at the adjourned sessions," even though there may be time to do so (*u*). In *R. v. Sussex JJ.* (*x*), it was shown that the practice was to adjourn the quarter sessions from the western to the eastern division of the county, and to enter appeals relating to the eastern division at the adjourned sessions; it was held that, although the adjournment was only a continuance of the original sessions, and the time for appealing was fixed by the commencement of the original sessions, the appeal might properly be entered at the adjourned sessions if that was in accordance with the practice of the sessions.

Quarter sessions in Sussex.—The general principles laid down by the cases just cited are still good law, but it must be noticed that the practice in Sussex is now affected by s. 7 of the County of Sussex Act, 1865 (*y*), which enacts that "with respect to any notice required to be given by one party to another, relative to any appeals or other matter to be heard and determined by the court of quarter sessions of the peace for the county of Sussex, the the first day of sessions shall be deemed to be the day on which the court of quarter sessions for the county begins to be held in that division wherein the appeal or other matter is heard and determined." The effect of this section appears to be that the sessions held in one division by adjournment from the other are to be regarded as original sessions, for the purpose of considering what are "the next practicable sessions": so that the appellant (if there is time to do so) is bound to give notice for, and enter his appeal at, the adjourned sessions.

The next practicable sessions.—By the Poor Relief Act, 1743 (*z*), the right of appeal was limited to the "next general or quarter sessions." This was at an early date construed as

(*s*) *R. v. Surrey JJ.* (1813), 1 M. & S. 479.

(*t*) *R. v. Lancashire JJ.* (1857), 8 E. & B. 563, at pp. 566, 570; *R. v. Sussex JJ.* (1797), 7 T. R. 107.

(*u*) *R. v. Surrey JJ.*, *supra*; *R. v. Sussex JJ.* (1865), 34 L. J. M. C. 69, affirming *R. v. Sussex JJ.* (1797), 7 T. R. 107.

(*x*) (1797), 7 T. R. 107.

(*y*) 28 & 29 Vict. c. 37. See also s. 5 of the same Act as to the effect of adjournments from one division of the county to the other.

(*z*) 17 Geo. 2, c. 38, s. 4: see Appendix II., *infra*.

meaning "the next practicable sessions"; and a similar limitation was put upon the right of appeal to special sessions, given by the Parochial Assessments Act, 1836 (*a*), although that statute does not expressly limit the right of appeal to the next practicable special sessions. In cases where the special sessions have jurisdiction (as to which see pp. 538, 539), the appeal may be taken to the "next practicable" special sessions, or the "next practicable" quarter sessions at the option of the appellant (*b*). The following remarks upon the meaning of the phrase "next practicable sessions," will apply equally whether the appeal is taken to quarter sessions or special sessions, and to sessions held either for a county or borough.

The general principle laid down by the older cases is still good law, but the application of that principle has been modified by modern statutes in two ways.

First, it is now made a condition precedent to the exercise of the right of appeal to any sessions that the appellant must have given to the assessment committee notice of objection to the valuation list, and must have failed to obtain relief (*c*). Before the time for appealing can begin to run against the appellant, these conditions must have been complied with.

Secondly, the statutes now require fourteen clear days' notice of appeal to be given to the overseers, or persons standing in the place of overseers (*d*), and twenty-one days' notice to be given to the assessment committee (*e*); whereas under the Poor Relief Act, 1743 (*f*), "reasonable notice" was required. The new statutory requirements must be borne in mind in applying the earlier cases.

The words "next general or quarter sessions," which are used in the Poor Relief Act, 1743, relating to appeals against poor rates, are also used in 3 & 4 Will. and Mary, c. 11, s. 10, relating to appeals against orders of removal; and cases decided on either statute have been generally cited as authorities on the other, and are so dealt with here.

The words "next general or quarter sessions" were early construed as meaning "the next possible sessions" (*g*), or "the next practicable sessions at which an effectual appeal could be lodged; and if by the late publication of the rate the parties are driven into such a narrow point of time as not to be able to make an effectual appeal at the next sessions, those must be considered the next

(*a*) 6 & 7 Will. 4, c. 96, s. 6. in Appendix II., *infra*; see also p. 539, *supra*.

(*b*) See p. 539, note (*h*), *supra*.

(*c*) See U. A. C. A. Act. 1864. in Appendix II.: see also p. 553, *supra*.

(*d*) Under 12 & 13 Vict. c. 45, s. 1: *et vide infra*, pp. 577, 578.

(*e*) Under U. A. C. A. Act. 1864. s. 1: *vide infra*, p. 579.

(*f*) 17 Geo. 2, c. 38, s. 4: see Appendix II.

(*g*) *R. v. East Riding JJ.* (1779), 1 Doug. 193; *R. v. Herefordshire JJ.* (1789), 3 T. R. 504.

when such appeal can be made effectually" (*h*). It was held that the parties must have a reasonable time for making the necessary inquiries and considering whether to appeal or not (*i*), and for considering the grounds of appeal, which must be stated in the notice (*k*). How long is a "reasonable time" for this purpose has always been treated as a question of fact, depending on the circumstances of each case (*l*); "five minutes may be enough in some cases, and five months not enough in others" (*m*). Two days (of which Sunday was one) were held to be too short a time in *R. v. Sussex JJ.* (*n*), and *R. v. Essex JJ.* (*o*); but were held long enough in *R. v. Herefordshire JJ.* (*p*). Four days were held long enough in *R. v. Wiltshire JJ.* (*q*). In many of the old cases distance from the town where the quarter sessions were held was regarded as an important factor to be considered. The subsequent creation of railways has made distance of less importance, but the most recent case (*r*) shows that distance may still have to be taken into account.

In *Liverpool Gas Co. v. Everton* (*s*), the decision of the assessment committee was given on August 3rd, and the next general sessions (*t*) were held on September 1st, so that the appellants had only seven clear days before serving on the assessment committee the twenty-one days' notice required by s. 1 of the Union Assessment Committee Amendment Act, 1864; the appellants did nothing at the sessions held on September 1st, but entered an appeal at the quarter sessions held on October 26th. The recorder held that the appellants had not had a "reasonable time" to consider whether they would appeal or not, and that consequently the sessions held on October 26th were the "next practicable sessions": but the Queen's Bench held (1) that upon a motion for a prohibition against further proceeding with the appeal, it was competent for them to review the decision of the recorder as to what was a "reasonable time"; and (2) that under the circumstances seven

(*h*) *R. v. Sussex JJ.* (1812), 15 East, 206, following *R. v. Dorsetshire JJ.* (1812), 15 East, 200.

(*i*) *R. v. Essex JJ.* (1817), 1 B. & Ald. 210, following *R. v. Surrey JJ.* (1813), 1 M. & S. 479; *R. v. Flintshire JJ.* (1797), 7 T. R. 200.

(*k*) *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100, at p. 110.

(*l*) See, for example, *R. v. Wiltshire JJ.* (1772), 2 Const. 725; *R. v. Carmarthen JJ.*, Ryde's Rat. App. (1891—1893), 334.

(*m*) *Per* Lord DENMAN, during the argument in *R. v. Cornwall JJ.* (1837), 6 A. & E. 894, at p. 898.

(*n*) (1812), 15 East, 206.

(*o*) (1817), 1 B. & Ald. 210.

(*p*) (1789), 3 T. R. 504.

(*q*) (1772), 2 Const. 725.

(*r*) *R. v. Carmarthen JJ.*, Ryde's Rat. App. (1891—1893), 334; *infra*, p. 573.

(*s*) (1871), L. R. 6 C. P. 414.

(*t*) It was assumed the "general" sessions were equivalent to quarter sessions. This assumption seems contrary to *R. v. London JJ.* (1812), 15 East, 632, and *R. v. Middlesex JJ.* (1843), 4 Q. B. 807; *vide supra*, p. 568.

days constituted a "reasonable time" for the appellants to make up their mind, and consequently that the sessions held on October 26th were not the "next practicable sessions," and the appeal was too late.

But in *R. v. Carmarthen JJ. (u)*, the decision of the assessment committee was given on March 9th, and was considered by the directors of the appellants (a Welsh railway company) on March 10th; the line was worked by a Mr. Waddell, who resided in Edinburgh, and with whom the directors wished to communicate: the directors took counsel's opinion on the grounds of appeal, which reached their solicitor on March 17th; and on March 22nd notice of appeal was given for the sessions held on April 7th (this being less than the twenty-one days' notice required by statute). It was held by the Queen's Bench Division and by the Court of Appeal that those sessions were not the next practicable sessions under the special circumstances.

The effect of the cases appears to be that although the justices have no longer to consider what is a "reasonable notice" to which the respondents are entitled, they have to determine (if any question arises) whether the sessions, at which the appeal has been entered, are the "next practicable sessions" or not; and that the King's Bench Division have "a kind of visitatorial jurisdiction over the justices" (*x*): the justices are not sole judges to decide the question "what are the next practicable sessions," and the judges of the High Court can interfere with their decision (*y*).

In an extreme case (*z*) where the appellants refrained from entering an appeal against an order of removal at the next practicable sessions, under an agreement with the respondents that the case should follow the decision of another appeal, which was expected to, but in the event did not, determine the point at issue, the King's Bench granted a *mandamus* to a subsequent court of quarter sessions to receive the appeal first mentioned. It must, however, be noticed that in this case the contention of the appellants almost amounted to an allegation of a breach of faith on the part of the respondents (*a*).

(*u*) Ryde's Rat. App. (1891—1893), 334.

(*x*) See *R. v. Wiltshire JJ.* (1808), 10 East, 404. Cf. *Liverpool Gas. Co. v. Everton* (1871), L. R. 6 C. P. 414; *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100, in both of which cases the Queen's Bench overruled the decision of the quarter sessions as to what was a "reasonable time" for the appellants to consider whether they would appeal.

(*y*) See *R. v. West Riding JJ.* (1833), 5 B. & Ad. 667, at pp. 671, 672, and the cases cited in the preceding note. Compare with these cases *R. v. Commissioners of Special Purposes of Income Tax* (1888), 21 Q. B. D. 313, at p. 319; *R. v. General Commissioners of Taxes for Clerkenwell*, [1901] 2 K. B. 879.

(*z*) *R. v. Wiltshire JJ.* (1801), 1 East, 681.

(*a*) Cf. *Southampton Gas Co. v. Southampton Guardians* (1877), 2 Q. B. D. 371, at p. 375 n., *infra*, p. 602, and *London and North Western Rail. Co. v. Bedford* (1852), 17 Q. B. 978, *infra*, p. 619.

Entry of appeal without notice, or with insufficient notice.

—By s. 4 of the Poor Relief Act, 1743 (*b*), persons aggrieved by a rate may appeal to the *next* general or quarter sessions, giving reasonable notice to the overseers: and “if it shall appear to the justices that reasonable notice was not given, then they *shall* adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same.” Although modern statutes have substituted for the “reasonable notice” formerly required, a notice for a fixed number of days (*c*), on other points s. 4 of the Poor Relief Act, 1743, is still in force. It is still necessary to appeal to the “next sessions,” taking those words as meaning the “next practicable sessions” (*d*), although the length of notice now required must be taken into account in considering what are the “next practicable sessions.”

It must be specially noticed that s. 4 of the Poor Relief Act, 1743, (which empowers and obliges quarter sessions to enter and respite an appeal of which no notice—or insufficient notice—has been given,) does not apply to appeals to special sessions, under s. 6 of the Parochial Assessments Act, 1836 (*e*); and that in appeals under that section to special sessions, the giving of notice of appeal in due time to the necessary parties is a condition precedent to the appeal (*f*). And it has been held at quarter sessions that failure to give to a necessary party notice of an appeal *from* special sessions under s. 6 of the Parochial Assessments Act, 1836, is fatal (*g*). What is said in the following paragraphs does not apply to appeals to, or from, special sessions under that section.

Under the words above quoted from s. 4 of the Poor Relief Act, 1743, and under almost identical words in 9 Geo. 1, c. 7, s. 8 (relating to appeals against orders of removal), the sessions were directed to adjourn the appeal to the next sessions, where reasonable notice had not been given (*h*). It was never doubted that the sessions were bound to receive and adjourn the appeal, where the appellant had no time (after the cause of appeal had arisen) to serve notice of appeal. But a difficulty arose in cases where the appellant had time to give “reasonable notice,” but, having failed to do so, claimed the right to enter an appeal at the next sessions after the cause of appeal had arisen, and to have it adjourned to the following sessions for want of a “reasonable notice” to the respondents. Although at one time a contrary decision was

(*b*) 17 Geo. 2, c. 38: see Appendix II., *infra*.

(*d*) *Vide supra*, p. 570.

(*c*) *Vide infra*, p. 579.

(*e*) *Vide supra*, p. 540.

(*f*) *R. v. Tewkesbury JJ.*, [1903] 1 K. B. 39; Ryde & Konstam's Rat. App. (1894—1904), 312.

(*g*) *Vide supra*, p. 546, note (*g*). This seems to follow from *R. v. Tewkesbury JJ.*, *supra*.

(*h*) The giving of notice of appeal against the rate must be distinguished from the giving of notice of objection to the valuation list, before the assessment committee, under U. A. C. A. Act, 1864, s. 1, *supra*, p. 553. Failure to give notice of objection to the valuation list is a defect which cannot be remedied by respiting the appeal.

given (*i*), it was ultimately decided that the sessions were bound to accept and adjourn the appeal, even though the appellant had time to give "reasonable notice" and had failed to do so (*k*), or had even failed to give any notice at all (*l*). As early as 1828, it was pointed out (*m*) that the effect of holding that it was not imperative on the appellant to give reasonable notice and to appeal to the *next* sessions where it was practicable, would be to enable him, by abstaining from giving notice or by giving an unreasonably short notice, to obtain by his own wrong a power of appealing to the next sessions but one. Notwithstanding this, Lord DENMAN, C.J., said in *R. v. London JJ.* (*n*), "Many things have grown up in practice which we might wish to see altered ; but the greatest confusion would ensue if we were to alter a course so well understood as the practice on this point. It has always been understood that no notice is the same thing as no reasonable notice ; and that if no notice has been given of trial at the first practicable sessions, and they are the sessions next after the order [of removal], and the appeal is then entered, the court of sessions is bound to adjourn it." Again, in *R. v. Eyre* (*o*), where the sessions refused to hear an appeal of which notice had not been given to parties alleged to be under-rated, and the Queen's Bench granted a *mandamus* to enter continuances and hear the appeal, Lord CAMPBELL, C.J., said :

"It has long been settled that the enactments in 9 Geo. 1, c. 7, s. 8 [as to appeals against orders of removal], and 17 Geo. 2, c. 38, s. 4 [set out on p. 574, *supra*], are obligatory, and that though no notice at all has been given, the sessions must adjourn the appeal. If this had been *res integra*, I should have hesitated before I so construed the statute ; for I think it would have been better if a discretion had been entrusted to the sessions ; but the contrary is now settled (*p*). . . . No notice having been given to [the parties interested], the sessions must act as if no notice was given to the officers of the poor. They were not at liberty to dismiss the appeal, but were bound to adjourn it to the next sessions, and then to hear it."

It must be noticed that the judgment just cited was delivered in 1856, and, therefore, *after* the passing of the Quarter Sessions Act,

(*i*) *R. v. North Riding JJ.* (1789), 3 T. R. 150.

(*k*) *R. v. Gloucestershire JJ.* (1779), 1 Doug. 191 ; *R. v. Bucks JJ.* (1803), 3 East, 342, approved (as being a case "well considered") in *R. v. Shropshire JJ.* (1806), 7 East, 549 ; *R. v. Wilts JJ.* (1828), 8 B. & C. 380 ; *R. v. London JJ.* (1846), 9 Q. B. 41 ; *R. v. Eyre* (1856), 6 E. & B. 992. See also *R. v. Eyre* (1857), 7 E. & B. 609.

(*l*) *R. v. Shropshire JJ.*, *R. v. Wilts JJ.*, *R. v. London JJ.*, *ubi supra* ; *R. v. Eyre* (1856), 6 E. & B. 992 ; but note the judgment of BAYLEY, J., in *R. v. Wilts JJ.*

(*m*) See the argument in *R. v. Wilts JJ.* (1828), 8 B. & C. 380, at p. 382.

(*n*) (1846), 9 Q. B. 41, at p. 43.

(*o*) (1856), 6 E. & B. 992, at pp. 997, 998.

(*p*) In the report of the judgment in 26 L. J. M. C., at p. 16, the words used are : "It has been decided over and over again, and it must have been considered as settled when the 41 Geo. 3, c. 23 passed." In a subsequent case of *R. v. Eyre* (1857), 7 E. & B. 609, at p. 615, Lord CAMPBELL speaks of the rule of practice acted upon by the earlier case as "an inveterate doctrine."

1849 (*q*), which substituted fourteen clear days' notice for the "reasonable notice" previously required under the Poor Relief Act, 1743. It seems, therefore, that Lord CAMPBELL must have considered that the Act of 1849 had made no difference in the construction of the earlier Act on this point (*r*), for otherwise he would not have felt bound to follow a practice of which he disapproved.

The line of cases cited above was not followed in *R. v. Kent JJ.* (*s*), but that case has been recently overruled in *R. v. De Grey* (*t*), in which it was held that giving notice of appeal is not a condition precedent to entering the appeal, and that where there is a failure to give notice, the quarter sessions are bound by 17 Geo. 2, c. 38, s. 4, to enter and respite the appeal.

But although an appellant who has given no notice, or an insufficient notice, is entitled as a matter of right to have his appeal entered at the next sessions and respited, yet if the appellant gives a sufficient notice for the next sessions, coupled with a notice that he will apply for a respite, which is opposed at the sessions, the justices have a discretion to grant a respite or not (*u*), and are entitled to call upon the appellant to proceed, and (if he is not ready to do so) may dismiss the appeal (*x*). This decision leads to the anomalous result that an appellant who has been guilty of delay in serving notice of appeal, is in a better position than an appellant who has not been guilty of delay.

Entry of appeal at the next sessions where service of sufficient notice is impossible.—If the appellant is able to enter his appeal at the next sessions, but has not time to give the notices required by the statutes, so that the appeal (if entered) cannot be tried at those sessions, the better opinion (*y*) appears to be that the appellant is not bound to go through the empty ceremony of entering the appeal and applying for a respite (*z*). It is perfectly safe to act on this view when it is absolutely impossible to serve the notices required by the statutes, for in that case the "next sessions" are not the "next practicable sessions"; but where the appellant has some breathing time (however short), so that it is

(*q*) 12 & 13 Vict. c. 45, s. 1. See Appendix II., *infra*.

(*r*) See *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100, at p. 109.

(*s*) (1899), 80 L. T. 622.

(*t*) [1900] 1 Q. B. 521.

(*u*) Apparently the King's Bench Division cannot review the exercise of this discretion: *cf. R. v. Thackwell* (1825), 4 B. & C. 62, at p. 64.

(*x*) *R. v. Eyre* (1857), 7 E. & B. 609.

(*y*) There are decisions to the contrary: see *R. v. Herefordshire JJ.* (1789), 3 T. R. 504; *R. v. West Riding JJ.* (1858), E. B. & F. 713; in the latter case, however, it was possible for the appellant to have given notice in time to try at the next sessions; see also *R. v. West Riding JJ.* (1815), 4 M. & S. 327.

(*z*) *R. v. Southampton JJ.* (1817), 8 B. & C. 641 n; *R. v. Essex JJ.* (1817), 1 B. & Ald. 210; *R. v. Kent JJ.* (1828), 8 B. & C. 639; *R. v. Devon JJ.* (1829), 8 B. & C. 640 n; *R. v. Surrey JJ.* (1880), 6 Q. B. D. 100. These cases are also supported by the judgments of KEATING and MONTAGUE SMITH, JJ., in *Liverpool Gas Co. v. Everton* (1871), L. R. 6 C. P. 414, at pp. 420, 421.

just possible to serve the statutory notices in time, his safest course (if he does not make up his mind to appeal soon enough to enable him to serve the notices) is to enter the appeal at the next sessions and apply for a respite. Otherwise, if it be held that those sessions were the "next practicable sessions," his right of appeal will be lost.

A distinction may here be pointed out : an appellant (according to the cases above cited) (*a*) by delaying the service of notices may prevent the hearing of his appeal at the "next practicable sessions," and yet preserve his rights, provided he enters his appeal at those sessions ; but he cannot by his dilatory conduct make the sessions impracticable which in fact were practicable sessions, and then (without entering his appeal) pass them wholly over as not being practicable (*b*). The "next practicable sessions" alone have original jurisdiction to hear the appeal : subsequent sessions may acquire a derivative jurisdiction to hear it by virtue of an order of respite ; but, apart from such an order, the subsequent sessions have no jurisdiction.

To whom notice of appeal must be given.—The Poor Relief Act, 1743 (*c*), directed that "reasonable notice" should be given to the "churchwardens or overseers." The Poor Rate Act, 1801 (*d*), directed that notice of appeal should be "delivered to or left at the places of abode of the churchwardens and overseers" of the parish "or any two of them" ; and by s. 6 of the same Act notice was also to be given to any person alleged by the appellant to be wrongly rated, or omitted from the rate, or rated at a wrong amount. And now (*e*) notice must also be given to the assessment committee of the union.

The Local Government Act, 1894, has introduced some changes and difficulties as to the position of the churchwardens and overseers, though it makes no change with regard to the position of the assessment committee, who are entitled to notice of appeal in every parish whether rural or urban.

First as to rural parishes : we have already seen (*f*) that the churchwardens of *every rural* parish have ceased to be overseers by virtue of s. 5 of the Local Government Act, 1894 ; and that in every rural parish having a parish council the parish council

(*a*) See *R. v. London JJ.*, and *R. v. Eyre*, *supra*, p. 575, and *R. v. De Grey*, *supra*, p. 576, and the cases thereby confirmed.

(*b*) *Per* Lord CAMPBELL, C.J. : *R. v. West Riding JJ.* (1858), E. B. & E. 713 at p. 717, following *R. v. Secenwaks* (1845), 7 Q. B. 136 ; and *R. v. Peterborough JJ.* (1857), 7 E. & B. 643.

(*c*) 17 Geo. 2, c. 38, s. 4 : see Appendix II., *infra*.

(*d*) 41 Geo. 3, c. 23, s. 4 : see Appendix II., *infra*.

(*e*) See U. A. C. A. Act, 1864, s. 1, in Appendix II., *infra*.

(*f*) See the paragraphs relating to "Overseers," *supra*, p. 517. As to service of notice of objection before the assessment committee, upon the overseers or parish council, *vide supra*, p. 525.

are substituted for the churchwardens and overseers as respondents (*g*) to an appeal against a rate under s. 6 (1) of the same Act; and that in every rural parish not having a parish council the county council *may* (in effect) substitute the parish meeting for the overseers by means of an order under s. 19 (10) of the same Act (*h*).

Next, as to parishes other than rural parishes: the Local Government Act, 1894, *of itself*, makes no change, but under s. 33 (1) of that Act (*i*) the Local Government Board may (in effect) make an order transferring to some other authority the powers, duties, and liabilities of overseers (*k*). And it is believed that in many cases, where the power of appointing overseers has been taken away from the justices, the order of the Local Government Board has (in effect) provided that the churchwardens shall cease to be overseers. This must depend upon the precise terms of the order in each case.

The effect of these provisions may be summarised thus. The respondents to an appeal against a rate are—

I. In every parish, whether urban or rural, the persons (if any) alleged to be over or under-rated, or to be wrongly included in, or omitted from, the rate; and where the Union Assessment Acts are in force (*l*), the assessment committee:

II. And in addition—

- (a) In a rural parish having a parish council, the parish council:
- (b) In a rural parish not having a parish council, either
 - (i) the overseers (excluding the churchwardens), or
 - (ii) if the county council have so ordered, the parish meeting:
- (c) In a parish other than a rural parish, either (i) the churchwardens and overseers, or (ii) if the Local Government Board have so ordered, the overseers (excluding the churchwardens) or such other authority as the Board may have substituted for the overseers.

The result is, that in every case, except that of a parish having a parish council, the question, who are the respondents to be served with notice of a rating appeal, *may* depend upon the terms of an

(*g*) This was doubted by CHANNELL, J., in *R. v. De Grey*, [1900] 1 Q. B. 521, at p. 524; but the point was definitely decided, as stated in the text, in *R. v. Tewkesbury JJ.*, [1903] 1 K. B. 39; Ryde and Konstam's Rat. App. (1894—1904) 312. See also *R. v. Salop JJ.* (1896), 12 T. L. R. 526.

(*h*) So far as the writer's experience goes, an order, under s. 9 (10) of the Local Government Act, 1894, has seldom (if ever) been made by any county council.

(*i*) Set out in Appendix II.; see also pp. 517, 518. *supra*.

(*k*) The effect of an order under this section was discussed in *R. v. De Grey*, [1900] 1 Q. B. 521. *Cf. R. v. Tewkesbury JJ.* [1903] 1 K. B. 39; Ryde and Konstam's Rat. App. (1894—1904) 312.

(*l*) As to the places to which these Acts do not apply, see note (*f*), *supra*, p. 511.

order, made either by the county council or the Local Government Board, and applying only to the particular parish for which the rate is made ; and it appears desirable to make inquiries of the various local authorities to ascertain whether such an order has been made.

Length of notice of appeal, and method of service.—Twenty-one days' notice in writing must be given to the assessment committee (*m*). In counting the days, one day must be reckoned inclusively and the other exclusively (*n*). The Union Assessment Committee Act, 1862, by s. 42 (*o*) (among other methods of service) permits service of notice by post, the notice being addressed to the committee, at their clerk's office. Where this method of service is adopted, the notice must be taken to be given at the time when the letter would be delivered according to the ordinary course of post, even though the actual delivery of the notice be delayed (*p*).

The twenty-one days must be counted from the first day of the sessions, because the "sessions are always considered in law as one day, to whatever period they may by accidental causes be extended" (*q*) ; and this rule seems to apply even where the sessions are adjourned from place to place (*r*), except in Sussex (*s*).

In the case of all respondents other than the assessment committee, it was formerly sufficient to give "reasonable notice" (*t*). But now by s. 1 of the Quarter Sessions Act, 1849 (*u*), "fourteen clear days' notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or practice of any court or courts, to the contrary notwithstanding." In counting the days, fourteen days must intervene between the day on which the notice is given and the first day of the sessions (*v*).

By s. 4 of the Poor Rate Act, 1801 (*y*), notice of appeal was to be delivered to or left at the places of abode of the churchwardens and overseers, or any two of them ; and this still applies whenever it is necessary to serve churchwardens or overseers (*z*). Where it is necessary to give notice to a parish council, the

(*m*) See U. A. C. A. Act, 1864, s. 1, in Appendix II., *infra*.

(*n*) *R. v. West Riding JJ.* (1833), 4 B. & Ad. 685 ; *R. v. Goodenough* (1835), 2 A. & E. 463.

(*o*) Set out in Appendix II., *infra*.

(*p*) *R. v. Slawstone* (1852), 18 Q. B. 388 ; *R. v. Recorder of Richmond* (1858), E. B. & E. 253 ; *R. v. West Riding JJ.* (1858), E. B. & E. 713, at p. 717.

(*q*) *R. v. Surrey JJ.* (1813), 1 M. & S. 479.

(*r*) *R. v. Lancashire JJ.* (1857), 8 E. & B. 563 ; *R. v. Sussex JJ.* (1797), 7 T. R. 107.

(*s*) *Vide supra*, p. 570.

(*t*) See 17 Geo. 2. c. 38, s. 4, in Appendix II.

(*u*) 12 & 13 Vict. c. 45, commonly called Baines' Act : see Appendix II.

(*v*) *R. v. Herefordshire JJ.* (1820), 3 B. & Ald. 581 ; *R. v. Shropshire JJ.* (1838), 8 A. & E. 173.

(*y*) 41 Geo. 3. c. 23 : see Appendix II.

(*z*) The question who are the persons to be served is considered, *supra*, p. 578.

notice may be given to the clerk of the council (*a*). Except in the case of an assessment committee, service of notice by post appears not to be expressly authorised by statute; and if in the case of other respondents this method of service be adopted, the rule appears to be that although there would be a strong presumption that the notice was delivered in the ordinary course of post, this presumption may be rebutted by direct evidence to the contrary (*b*). If, therefore, the notice is delayed, or is not delivered at all, the appellant must take the consequences. The question whether, in the absence of proper notice, the appeal can be entered and respite to the next session, has been already considered (*c*).

Contents of notice of appeal: amendment.—By s. 1 of the Quarter Sessions Act, 1849 (*d*), notice of appeal “shall be in writing, signed by the person giving the same or by his attorney on his behalf (*e*), and the grounds of appeal shall be specified in every such notice; provided always that it shall not be lawful for the appellant on the trial of any such appeal to go into or give evidence of any other ground of appeal besides those set forth in such notice.”

This section is founded on and in substance reproduces s. 4 of the Poor Rate Act, 1801 (*f*); which Act, by s. 5, permitted the hearing of an appeal where no notice had been given, or upon grounds not stated in the notice, provided the parties gave their consent, signified in open court (*g*), to the hearing of such an appeal. As the Quarter Sessions Act, 1849, reproduces s. 4, but does *not* reproduce s. 5, of the Poor Rate Act, 1801, and enacts that it shall not be lawful for the appellant to go into grounds of appeal not stated in the notice, it is by no means clear that it is still open to the respondents to waive the absence of notice, under s. 5 of the Poor Rate Act, 1801. In any case it is clear that the appellant cannot, even by consent, go into any ground of appeal unless it has already been made the subject of an objection to the valuation list before the assessment committee, and has been specified in the notice of objection (*h*). If a notice of appeal

(*a*) Local Government Act, 1894, Schedule I., Part II., r. 15.

(*b*) *Wall's Case* (1872), L. R. 15 Eq. 18.

(*c*) *Vide supra*, p. 574.

(*d*) 12 & 13 Vict. c. 45: see Appendix II., *infra*.

(*e*) Notice signed in the appellant's name by the clerk of his attorney has been held sufficient under this section; see *R. v. Kent JJ.* (1873), L. R. 8 Q. B. 305, in which the court held that personal signature was not necessary, and that the maxim “*qui facit per alium, facit per se*,” applied. This suggests that in an appeal by a company, signature by the secretary (if duly authorised) would be sufficient; but it would be safer for the appellant's solicitor to sign the notice.

(*f*) 41 Geo. 3, c. 23: see Appendix II., *infra*.

(*g*) No other form of consent was sufficient: *R. v. Sheard* (1824), 2 B. & C. 856.

(*h*) See *Williams v. Westminster Union* (1874), 30 L. T. 710, *supra*, p. 563. (*Cf.* also *R. v. London JJ.*, [1897] 1 Q. B. 433, *infra*, p. 636. In *R. v. Essex JJ.*, [1902] 1 K. B. 180, at p. 187, it was suggested that the point was doubtful, but it is submitted that the decision in *Williams v. Westminster Union*, *supra*, is clear.

is bad on this ground as to some points, and good as to others, the appellant can, at the sessions, abandon the bad grounds of appeal and go on with the others (*i*).

By s. 3 of the Quarter Sessions Act, 1849 (*k*), grounds of appeal "imperfectly or incorrectly set forth" may be amended by order of the sessions, whose decision as to the sufficiency of the notice and as to amendment is made final by s. 9 of the same Act. The power thus given to amend the statement of a ground of appeal does not apparently enable the sessions to insert in the notice of appeal new grounds of appeal, or to substitute one distinct ground of appeal for another.

In *R. v. Sheard* (*l*), decided on s. 4 of the Poor Rate Act, 1801, and before the passing of the Quarter Sessions Act, 1849, which gave the sessions power to amend the notice of appeal, it was held that the grounds of appeal must be specified in the notice in such a way that the respondents may know distinctly what objections they are to prepare to meet (*m*). It is submitted that this rule must be applied at the present day in considering whether the grounds of appeal, as stated in the notice, are sufficient without amendment.

It has been decided on s. 4 of the Poor Rate Act, 1801, that on the hearing of an appeal the sessions have no jurisdiction to quash the rate for a defect appearing on the face of the rate itself, unless that defect be specified in the notice as one of the grounds of appeal (*n*). And it seems that this decision is still good law, whether the section here referred to be considered to be still in force or to be superseded by s. 1 of the Quarter Sessions Act, 1849, which is set out above.

Several persons having a joint grievance in the omission or under-rating of several persons may combine in giving one notice of appeal. See *R. v. Sussex J.J.* (*o*) (approving *R. v. White* (*p*)), in which several persons combined in one appeal on the ground that they were not rateable, respectively, for distinct kinds of property, such as ships, furniture, stock in trade, salaries and pay of officers in the navy. The more common practice in modern times is, however, where there are two or more appellants, to give

(*i*) *R. v. Kent J.J.* (1870), L. R. 6. Q. B. 132.

(*k*) 12 & 13 Viet. c. 45; set out in Appendix II.

(*l*) (1824), 2 B. & C. 856.

(*m*) A similar rule was laid down in *R. v. Oxfordshire J.J.* (1823), 1 B. & C. 279, decided on 49 Geo. 3, c. 68, s. 5. So, too, in *R. v. Derbyshire J.J.* (1837), 6 A. & E. 885, decided on 4 & 5 Will. 4, c. 76, s. 81, which required appellants to state the grounds of their appeal (in appeals against orders of removal), it was said that the statement must enable the respondents "to go to the sessions fully aware of the questions which are to be discussed."

(*n*) *R. v. Bromyard* (1828), 8 B. & C. 240. The defect consisted of a failure to specify the property in respect of which several persons were rated. Note that in that case there was no waiver by the respondents of objection to the defect in the notice.

(*o*) (1812), 15 East 206.

(*p*) (1792), 4 T. R. 771.

separate notices and to enter separate appeals. It has been held that one appeal by the same appellant against two or more poor rates is valid, if brought in time (*q*) ; but here again the more common practice now is to enter separate appeals.

Notice of appeal to a wrong court.—Difficult questions may arise where by mistake the notice of appeal specifies a wrong court, *e.g.*, where it states that the appeal will be taken to borough quarter sessions instead of county quarter sessions. The effect of the cases appears to be as follows : In considering whether the notice of appeal can be treated as a sufficient notice, so as to give the right court jurisdiction to hear the appeal, the test to be applied is, were the respondents in fact misled by the error in the notice ? If they were not, the notice can be treated as sufficient notice of appeal to the right court, *unless* the appellants have already acted upon the notice, and have treated it as a notice of appeal to the wrong court. Thus, in *R. v. Recorder of Liverpool* (*r*), notice of appeal against an order of removal was wrongly given for the Lancashire county sessions, and, on the mistake being discovered after the time for appealing had expired, the appellants gave notice that they meant to appeal to the Liverpool borough sessions : the county sessions came first and no appeal was entered there ; at the borough sessions, subsequently held, the respondents objected to the sufficiency of the notice. It was held that the notice of intention to appeal being clearly given, it was not rendered inoperative by the statement that the appeal would be to the county sessions, and that that statement was “merely an erroneous surplusage which could not mislead.” So, too, in *R. v. Bucks JJ.* (*s*), where notice of appeal was given for the quarter sessions of a borough which had no separate court of quarter sessions, it was held that this was a sufficient notice of appeal to the county sessions. But, in *R. v. Salop JJ.* (*t*), notice of appeal was wrongly given for the quarter sessions of a borough which had a separate court of quarter sessions, and the respondents appeared there and took objection to the jurisdiction, and, notwithstanding the opposition of the appellants, who contended that the appeal was rightly brought to the borough sessions, the objection was allowed. Thereupon, the appellants entered and respited the appeal at the county sessions, held the next day. It was held that the appellants could not treat the original notice as notice of appeal to the county sessions ; for all parties having acted upon it as notice of appeal to the borough sessions, it was not open to the appellants to say that the reference to the borough sessions could be treated as mere surplusage. In this case, it must be noticed,

(*q*) *R. v. Suffolk JJ.* (1818), 1 B. & Ald. 640.
(*r*) (1850), 15 Q. B. 1070.

(*s*) (1854), 4 E. & B. 259 n.
(*t*) (1854), 4 E. & B. 257.

first, that the respondents acted on the erroneous notice. Secondly, that the appeal was against the settlement of a lunatic, notice of which, by 16 & 17 Vict. c. 97, s. 110, must be given within twenty-one days of service of an order. Had it been an appeal against a poor rate, entry and respite of the appeal at the county sessions would have been good, even though no notice of appeal for those sessions had been given (*u*).

But in *R. v. Recorder of Leeds* (*x*), notice of appeal having been wrongly given for the county sessions instead of the Leeds borough sessions, the appellants having discovered the mistake before the sessions were held, gave notice that they abandoned the appeal: the respondents did not attend at the county sessions (where no appeal was entered), but attended the borough sessions and obtained an order for their costs, though no appeal was entered there. It was held that the recorder would have had jurisdiction to hear the appeal, and therefore had jurisdiction to give costs (*y*). This decision seems consistent with the view that the respondents, after receiving notice of abandonment of the appeal, might have attended at the county sessions for which the notice had been given, and could have obtained from that court an order for costs up to the date of notice of abandonment (*z*).

Where the mistake is discovered in time, the appellant can abandon the irregular notice and enter his appeal at the right court, provided he does so at "the next practicable sessions," and then claim to have the appeal respited to the next sessions, on the ground that the requisite notice of appeal has not been given (*a*).

The cases cited in the note (*b*), though they do not relate to appeals against a poor rate, seem to prove that a notice of appeal will not be rendered invalid by a misdescription of that against which the appeal is brought, if the error be one which could not mislead the respondents.

Payment of rate pending an appeal.—By s. 2 of the Poor Rate Act, 1801 (*c*), the giving of notice of appeal does not prevent the recovery of the rate, but until the appeal has been heard and determined, no greater sum may be recovered than that at which the appellant was assessed in the last effective rate (*d*). By s. 1

(*u*) *Vide supra*, p. 574.

(*x*) (1861), 30 L. J. M. C. 86.

(*y*) See 12 & 13 Vict. c. 45, s. 6, in Appendix II., *infra*.

(*z*) See *R. v. Padwick* (1858), 27 L. J. M. C. 113, *infra*, p. 598.

(*a*) *Vide supra*, p. 574.

(*b*) *R. v. Carmarthenshire JJ.* (1833), 4 B. & Ad. 563; *R. v. Denbighshire JJ.* (1841), 9 Dowl. P. C. 509; 10 L. J. M. C. 79; *R. v. Oxfordshire JJ.* (1843), 4 Q. B. 177; 12 L. J. M. C. 40.

(*c*) 41 Geo. 3, c. 23: see Appendix II., *infra*.

(*d*) The giving of a notice of objection to the valuation list, as a step towards subsequently giving notice of appeal against the rate (*vide supra*, p. 553) does not operate as a stay, and the rate is recoverable in full, until notice of appeal is actually given.

of the same Act, if on the hearing of the appeal the sessions quash the rate altogether, then the sum charged by the rate may be recovered, and will be taken as payment on account of the next effective rate (*e*) ; unless the quarter sessions make an order under s. 3 that the rate shall not be paid, and that no proceedings be commenced for the recovery, or that proceedings already commenced shall be stayed. If the rate is not quashed altogether, but the appellant's assessment is struck out or reduced, then by s. 8 of the same Act, the quarter sessions shall order the money already over-paid to be repaid by the overseers.

It has been held that an order for repayment, under the section just quoted, can be made only by the sessions which hears the appeal, or (where a case is stated for the Queen's Bench) by the sessions which reduces the assessment, and that an order for repayment made by a subsequent sessions is too late (*f*'). But it was subsequently held that an express order of sessions (directing repayment) was not necessary to enable the overseers to give credit for over-payments, in levying subsequent rates ; and that the Court of Queen's Bench in their discretion would not grant a *mandamus* to issue distress warrants for the subsequent rates in full, as that would be working a manifest injustice (*g*). As to the question by whom repayment can be ordered, where an appeal has been referred to arbitration, see *North Eastern Rail. Co. v. York Union* (*h*).

Validity of rules of practice at sessions.—It is always desirable to ascertain beforehand what standing orders or rules of practice are in force at the particular sessions where the appeal is to be entered. At some sessions the rules of practice require appeals to be entered in a particular manner or within a particular time, or require the parties to file a written statement of the facts to be proved, or the points of law to be raised. A question may arise under what circumstances a non-compliance with these rules may take away the right of appeal.

There appears to be no general (*i*) statutory power to make rules regulating proceedings ; but it seems that at common law, apart from any statutory provision, it is incident to the court of quarter sessions to regulate its own practice (*k*), although the King's

(*e*) Not the next rate but one : see *R. v. Kingston JJ. and Wedd* (1858), 5 B. & E. 259.

(*f*') *R. v. St. Peter's, York* (1832), 4 B. & Ad. 342 : see also *Priestley v. Watson* (1834), 2 Cr. & M. 691.

(*g*) *R. v. Parker* (1857), 7 E. & B. 155. But note that an order for repayment was not applied for, in consequence of an undertaking to repay the excess : see 7 E. & B., at p. 156.

(*h*) (1902), Ryde and Konstam's Rat. App. (1894—1904), 99 ; *infra*, p. 597.

(*i*) The special power to make rules, given by s. 27 of the Valuation (Metropolis) Act, 1869 (see Appendix II., *infra*), applies only to the assessment sessions, now the London quarter sessions. As to the Hertfordshire sessions, see 37 & 38 Vict. c. 45, s. 20.

(*k*) See *R. v. Pawlett* (1873), L. R. 8 Q. B. 491.

Bench Division has authority to interfere for the purpose of seeing that no illegal practice prevails at the sessions to prevent the hearing of an appeal (*l*). The powers of the sessions, at most, enable them to declare (subject to the supervision of the King's Bench Division) how they will hear appeals, and do not enable them to refuse altogether to hear an appeal which the appellant has a right to bring before them. Thus, the sessions have no power to refuse to hear an appeal for non-compliance with a rule which imposes upon the appellant an additional condition which the statutes have not imposed ; *e.g.*, if the rule requires an additional notice of appeal to be given (*m*), or requires the appeal to be entered three clear days before the first day of the sessions (*n*). But although the sessions cannot refuse altogether to hear an appeal for non-compliance with such rules, they may possibly have power to order an adjournment to the next sessions (*o*), and to order the payment of costs thrown away by reason of the adjournment (*p*). With a mere rule of practice (regulating procedure), the King's Bench Division will probably not interfere, unless the rule appears to be very unreasonable (*q*). Thus, in *R. v. Suffolk JJ.* (*r*), in an appeal on the ground that the appellant was over-rated, the practice at the particular sessions required the appellant to begin, which he refused to do, and the sessions thereupon dismissed the appeal : the King's Bench refused a *mandamus* to the sessions to hear the appeal, holding that they could not inquire what was the most convenient rule of practice at quarter sessions, and that they would not grant a writ which had for its object a reversal of the rules as to proceedings, prevailing at quarter sessions, unless it were apparent that gross injustice would follow the refusal of the writ. In an earlier case, where the appellant appealed on the ground that he had no rateable property, the court said the fairest rule was for the respondents to begin, and to establish the rate (*s*) ; but where the appellant objected that he had no rateable property, or not rateable property to the amount at which he was rated, *viz.*, 250*l.* ; and the respondents proved that he was in receipt of certain tithe rents of the annual value of 6*s.* 8*d.*, and gave no further evidence ; and the sessions confirmed the rate, the appellant offering no evidence ; the King's Bench sent the case back to be re-heard, holding that the parish officers must show some

(*l*) *R. v. West Riding JJ.* (1833), 5 B. & Ad. 667 : see also *R. v. Wiltshire JJ.* (1808), 10 East, 404.

(*m*) *R. v. Norfolk JJ.* (1834), 5 B. & Ad. 990 : *et cf.* *R. v. Bird*, [1898] 2 Q. B. 340.

(*n*) *R. v. Pawlett*, *supra* : *et cf.* *R. v. Derbyshire JJ.* (1852), 22 L. J. M. C. 31.

(*o*) *R. v. Pawlett* (1873), L. R. 8 Q. B., at p. 495, *per* BLACKBURN, J.

(*p*) *R. v. Bird*, [1898] 2 Q. B., at p. 345, *per* WILLS, J. ; but note that the rules in that case were made under statutory powers.

(*q*) *R. v. Pawlett*, *ubi supra*.

(*r*) (1817), 6 M. & S. 57 ; see also *R. v. Newbury* (1791), 4 T. R. 475.

(*s*) *R. v. Newbury*, *supra*.

probable ground for the amount at which the appellant was charged, and that the mischief of any other rule would be enormous (*t*).

With these cases, however, must be compared the cases cited below (*u*), which show that, if an appeal has in fact been heard, the King's Bench will not interfere (where no case is stated by the sessions) in order to correct an erroneous judgment of the court below (*e.g.*, where the court are equally divided). The rule may, perhaps, be said to be that the King's Bench will interfere where the appeal has been improperly heard, but not where it has been rightly heard, but wrongly decided.

Disqualification of justices as parties to the appeal.—A question may arise, either at special sessions or quarter sessions, whether a particular magistrate is disqualified for hearing an appeal against a rate, either (1) because he is one of the parties to the appeal, or (2) because as a ratepayer he contributes (directly or indirectly) to the rate under appeal (*x*), or (3) because he is not free from bias on other grounds (*y*).

It is a leading principle of English law that no one shall be a judge in his own case (*z*); and on this principle it has been held in numerous cases that no one can be both prosecutor (or accuser) and judge in the same case (*a*). It seems clear that a member of the assessment committee who approved the list on which the rate appealed against was based, cannot sit as a justice to hear the appeal. A member of the board of guardians appointing the committee would probably be held to be disqualified, seeing that the committee can only appear as respondents in the name and with the consent of the guardians, after notice has been sent to every guardian, and costs ordered to be paid to the appellant, must be paid by the guardians, unless the court order them to be charged against the particular parish (*b*). The guardian, therefore, must at least have had an opportunity of considering whether the committee shall appear to oppose the appeal, and, when the appeal is decided, must adjudicate on the question whether the guardians shall pay or receive costs, or shall pay the costs of the assessment committee. In *R. v. Cumberland J.J.* (*c*), an *ex officio* guardian who was not a member of the assessment committee, but who had

(*t*) *R. v. Topham* (1810), 12 East, 546.

(*x*) *Vide infra*, p. 587.

(*u*) *Infra*, pp. 594, 595.

(*y*) *Vide infra*, p. 589.

(*z*) *Dimes v. Grand Junction Canal Co.* (1852), 3 H. L. 759. See also the report in 8 St. Tr. 85, where the authorities as to disqualification by interest are collected in a note on p. 110: *R. v. Farrant* (1887), 20 Q. B. D. 58; *cf. R. v. Owens* (1859), 28 L. J. Q. B. 316.

(*a*) See, for instance, *R. v. Gaisford*, [1892] 1 Q. B. 381; *Leeson v. General Council of Medical Education* (1889), 43 Ch. D. 366; *Allinson v. General Council of Medical Education*, [1894] 1 Q. B. 750; *R. v. Lee* (1882), 9 Q. B. D. 394; *R. v. London County Council*, [1892] 1 Q. B. 190.

(*b*) See U. A. C. A. Act, 1864, ss. 2, 3, in Appendix II., *infra*.

(*c*) (1888), 58 L. T. 491.

taken an active part in defending the appeal, and had voted that the committee should appear as respondents, was held to be disqualified for sitting to hear the appeal. At the hearing, the appellants (a railway company) waived any objection to the magistrate on the ground that he was an *ex officio* guardian, but did not know till after the decision was given that he had taken an active part in getting up the case for the committee. In consequence of the waiver, it was not necessary to determine whether the mere fact of being an *ex officio* guardian disqualified the magistrate (*d*).

A justice may be disqualified for hearing an appeal on the ground that he is himself appellant in a similar case before the same court (*e*).

Disqualification of justices as ratepayers.—At common law pecuniary interest, however slight, will disqualify any person for acting as a judge (*f*) ; therefore if a magistrate is, as a ratepayer, pecuniarily affected, however slightly, by an appeal against a rate, he is disqualified for hearing the appeal, unless the disqualification is removed by statute (*g*). The Justices Jurisdiction Act, 1742 (*h*), enacts that the justices for any county, riding, city, liberty, franchise, borough, or town corporate, may do all acts, etc., appertaining to their office, so far as the same relates to the laws concerning parochial taxes, levies, or rates, “notwithstanding such justices are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place,” affected by the acts of such justices. But the proviso contained in s. 3 of the same Act enacts that the Act shall not authorise or empower any justices “for any county or riding at large to act in the determination of any appeal to the quarter sessions.” In *R. v. Essex J.J.* (*i*) it was pointed out that justices for any “city, liberty, franchise, borough, or town corporate,” who are mentioned in s. 1, are not mentioned in s. 3 ; and therefore that the removal of the disqualification applies to the justices for such places, even when sitting at quarter sessions. It was also said that the disqualification was not removed in the case of a county (or riding), because “from the greatness of the number of justices for counties, the attendance of any particular justice could be spared upon appeals.”

(*d*) *Ex officio* guardians were abolished by the Local Government Act, 1894, s. 29 (1). In practice (as appears from the case cited) they frequently took little part in the proceedings of the guardians. It may, perhaps, be held that an elected guardian stands in a somewhat different category.

(*e*) *R. v. Great Yarmouth J.J.* (1882), 8 Q. B. D. 525, *infra*, p. 589.

(*f*) *Dimes v. Grand Junction Canal Co.* (1852), 3 H. L. 759 ; 8 St. Tr. 86 (see especially the note on p. 110, *ib.*) ; *R. v. Farrant* (1887), 20 Q. B. D. 58 ; *R. v. Gaisford*, [1892] 1 Q. B. 381 ; *R. v. Sunderland J.J.*, [1901] 2 K. B. 357. at pp. 366, 371.

(*g*) *R. v. Gaisford*, *ubi supra* : see also *R. v. Bolingbroke*, [1893] 2 Q. B. 347 ; *Ex parte Overseers of Workington*, [1894] 1 Q. B. 416.

(*h*) 16 Geo. 2, c. 18, s. 1. The Act was passed to meet the decision in *Great Charte v. Kennington* (1742), 2 Str. 1173.

(*i*) (1816), 5 M. & S. 513.

The Union Assessment Committee Amendment Act, 1864, s. 6, provides that "no justice of the peace shall be disqualified for acting in the determination of any appeal against a poor rate at any quarter or special sessions by reason of such justice being rated, or being liable to be rated, in some other parish in the union than that for which the rate appealed against is made."

It has been held that justices, who are ratepayers in the parish for which the rate under appeal was made, are not disqualified for sitting at *special* sessions in a city (*k*), or in a county (*l*), by reason of s. 1 of the Justices Jurisdiction Act, 1742. It had previously been held (1) that the section applied only to justices making original orders out of court, and not when exercising appellate jurisdiction; and (2) that a person acting as deputy recorder was not acting as a justice within the section (*m*). The decision upon the former point seems in direct conflict with *R. v. Essex J.J.* (*n*), *R. v. Bolingbroke* (*k*), and *Ex parte Overseers of Workington* (*l*); and (it is submitted) cannot be safely acted upon.

The combined effect of the Justices Jurisdiction Act, 1742, and s. 6 of the Union Assessment Committee Amendment Act, 1864, appears to be that the only disqualification attaching to justices as ratepayers is that they cannot sit at quarter sessions for a county or riding at large to hear an appeal against a rate for the particular parish in which they are ratepayers (*o*).

Although the technical disqualification on the ground of interest as a ratepayer may be removed by the statutes above cited, if the justice (besides being a ratepayer) is disqualified as being one of the litigants, or as having an interest in the result, the objection on this ground will of course prevail (*p*).

It is believed that the following is a correct explanation of the objects aimed at by Parliament in s. 6 of the Union Assessment Committee Amendment Act, 1864 (*q*): When the Justices Jurisdiction Act, 1742, was passed, the expenditure paid out of the poor rate was charged separately on each parish, and consequently a justice could not be pecuniarily affected as a ratepayer in one parish by a decision on a rate for another parish. But now that great part of the poor law expenditure is charged on the common fund of the union, a decision allowing an appeal against a rate for one parish must pecuniarily affect a ratepayer in any other

(*k*) *R. v. Bolingbroke*, [1893] 2 Q. B. 347.

(*l*) *Ex parte Overseers of Workington*, [1894] 1 Q. B. 416.

(*m*) *R. v. Recorder of Cambridge* (1857), 8 E. & B. 637.

(*n*) (1816), 5 M. & S. 513; *supra*, p. 587.

(*o*) If *R. v. Recorder of Cambridge*, *supra*, was rightly decided, the statement in the text is incorrect.

(*p*) *Cf. R. v. Henley*, [1892] 1 Q. B. 594; *R. v. Lee* (1882), 9 Q. B. D. 394; *R. v. Handsley* (1881), 8 Q. B. D. 383; *R. v. Meyer* (1875), 1 Q. B. D. 173.

(*q*) A somewhat different explanation was given in *R. v. Bolingbroke*, and *Ex parte Overseers of Workington*, *supra*.

parish in the same union; and s. 6 of the Union Assessment Committee Amendment Act, 1864, was apparently passed to remove the disqualification arising from such pecuniary interest, the disqualification arising from interest as a ratepayer in the same parish being already removed by the Justices Jurisdiction Act, 1742.

The disqualification of judges of the High Court, the Court of Appeal, and the House of Lords as ratepayers, is removed by the Jurisdiction in Rating Act, 1877 (*r*).

Disqualification on the ground of bias.—If a justice is alleged to be disqualified for hearing an appeal on the ground of being interested in the result, the rule appears to be as follows (provided there be no pecuniary interest, which is an absolute disqualification, unless it be removed by statute): A mere possibility of bias is not enough (*s*); but in order to be disqualified, the justice must have such a substantial interest in the result of the hearing as to make it likely that he has a real bias (*t*), or he must be in such a position that he may reasonably be suspected of being biassed (*u*). And in reviewing a decision which it is sought to set aside, “the question is not whether in fact” the justice “was or was not biassed; the court cannot inquire into that” (*x*).

In *R. v. Great Yarmouth JJ.* (*y*), where several appeals were taken to special sessions, the chairman (who was himself one of the appellants) sat on the bench while five cases were heard, a reduction being made in each case, and then left the bench and conducted his own appeal in the body of the court, the assessment being reduced in his case also; the Queen’s Bench Division set aside the orders made on all the appeals. It must, however, be noticed that in giving judgment, FIELD, J., said (*z*):

“Had this been a matter such, for instance, as an assault, or something having no common ground with the other cases, the fact that the mayor was going to conduct such a case would have no bearing on the decisions in the other cases. Here, however, there was a common feature in all the cases, namely, that to arrive at the rateable value in each of the six cases, the same elements of value had to be considered, for these houses were all in the occupation of the owners. The value would have to be arrived at in each case by comparison with that of the other hereditaments in its neighbourhood.”

(*r*) 40 & 41 Vict. c. 11; see Appendix II. *infra*.

(*s*) *R. v. Meyer* (1875), 1 Q. B. D. 173; *R. v. Rand* (1866), L. R. 1 Q. B. 230; *R. v. Farrant* (1887), 20 Q. B. D. 58; *R. v. Sunderland JJ.*, [1901] 2 K. B. 357, at p. 373.

(*t*) *R. v. Handsley* (1881), 8 Q. B. D. 383; *R. v. Gaisford*, [1892] 1 Q. B. 381; *R. v. Sunderland JJ.*, [1901] 2 K. B. 357, at pp. 364, 375.

(*u*) *Allinson v. General Council of Medical Education*, [1894] 1 Q. B. 750; *R. v. Huggins*, [1895] 1 Q. B. 563.

(*x*) *Per* Lord ESHER, M.R.: *Allinson v. General Council of Medical Education*, [1894] 1 Q. B., at p. 758.

(*y*) (1882), 8 Q. B. D. 525.

(*z*) 8 Q. B. D., at p. 529.

With reference to this passage, it may be said, on the one hand, that where the same court has to deal with appeals relating to such different subject-matters as (for example) a railway and a private dwelling-house, the appellant in the latter case would not be disqualified for hearing the former, because there is no common feature in the two cases. On the other hand, it may be said that where the two appeals are the result of a re-valuation made by one and the same surveyor, there *may* be one question common to both appeals, viz., what is the value of that surveyor's experience in rating matters.

Waiver of objection to disqualification.—An objection to a magistrate, on the ground that he is interested, may be waived; and the party intending to rely on the objection must take it before the decision is given (*a*), for a party who is aware of the objection and waives it, whereby he takes a chance of a decision in his favour, cannot afterwards raise it (*b*). But a party who waives an objection on one ground, may afterwards rely on another objection which he does not discover till after the hearing (*c*). Knowledge of an objection and acquiescence by an advocate are equivalent to acquiescence by his principal (*d*). And in proceedings to set aside a decision on the ground of interest, the party seeking to set it aside must prove that neither he nor his representative knew of the objection at the hearing (*e*).

Effect of presence of disqualified magistrate.—The rule appears to be that if a magistrate, who is disqualified, is present at the hearing of an appeal and takes a part which may influence the decision, it is bad, although the magistrate may not have voted when the decision was arrived at (*f*), or even though (if he did vote) there may have been a sufficient majority to support the decision without his vote (*g*). In *R. v. Meyer* (*h*), the Queen's Bench Division declined to go into the question whether a magistrate (who had sat when disqualified) took no part in the matter before him.

Appearance of assessment committee as respondents.—The assessment committee “may, with the consent of the guardians of

(*a*) It is perhaps necessary to take it before the hearing is begun; it is certainly advisable to take the objection as early as possible.

(*b*) *Wakefield Local Board v. West Riding and Grimsby Rail. Co.* (1865), L. R. 1 Q. B. 84.

(*c*) *R. v. Cumberland JJ.* (1888), 58 L. T. 491; *supra*, p. 586.

(*d*) *R. v. Richmond JJ.* (1860), 8 Cox. C. C. 314.

(*e*) *R. v. Richmond JJ.*, *supra*; *R. v. Kent JJ.* (1880), 44 J. P. 298. These cases seem to overrule *R. v. Cambridgeshire JJ.* (1855), 3 W. R. 418, where it was held that the party supporting the decision must prove an express waiver, and that the party objecting must not be supposed to assent by implication.

(*f*) *R. v. Herts JJ.* (1845), 6 Q. B. 753; *R. v. O'Grady* (1857), 7 Cox. C. C. 247; *R. v. Suffolk JJ.* (1852), 21 L. J. M. C. 169.

(*g*) *R. v. Herts JJ.*, *supra*.

(*h*) (1875), 1 Q. B. D. 173.

the union, *after notice shall have been sent to every guardian*, appear as respondents to the appeal, but in the name of the guardians of the union" (*i*). It has recently been held that s. 12 of the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58), does *not* apply to the consent of the guardians to the appearance of the assessment committee, required by s. 2 of the Union Assessment Committee Amendment Act, 1864; and, therefore, that it is not necessary to give fourteen days' notice to each guardian, as prescribed by s. 12 of the Act of 1882 (*k*). It seems to follow from this decision, either that a reasonable notice must be given to each guardian, or that the notice usually given (in practice) of other business is sufficient (*l*). It is important in the interests of both parties to make sure that, when the assessment committee appear as respondents, the consent of the guardians has been duly obtained. For without such consent, it seems the assessment committee have no *locus standi* (*m*), and they cannot recover costs, if successful, against the appellants (*n*); and it seems doubtful whether the appellants, if they succeed, can recover costs against the guardians (*o*); and they clearly cannot recover against the assessment committee or any member of that committee (*p*). Where appeals are entered by the same appellant against several consecutive rates on the same property, the consent of the guardians must be obtained afresh in each appeal (*q*). In the case cited in the note, the London County Council had appealed against a rate on certain sewage works at West Ham: a special case was stated by the sessions, which ultimately went to the House of Lords (see [1893] A. C. 562). Meanwhile eleven other rates had been made, against each of which an appeal was entered, and respited from time to time to abide the decision in the first appeal. The decision of the House of Lords being against the appellants, the eleven subsequent appeals to quarter sessions were dismissed, and the appellants were ordered to "pay the respondents the costs." The assessment committee had obtained the consent of the guardians

(*i*) U. A. C. A. Act, 1864, s. 2: see Appendix II., *infra*.

(*k*) *Smith v. Leigh Union*, [1904] 1 K. B. 484; Ryde and Konstam's Rat. App. (1894—1904), 339.

(*l*) The General Order of the Poor Law Board (July 24th, 1847), which applies to very many unions, by Article 35 directs that notice of every extraordinary meeting shall be given to every guardian "two days if practicable" before the meeting. In considering what is a reasonable notice, this provision should be taken into account.

(*m*) In *Smith v. Leigh Union*, *ubi supra*, this was admitted, and seems to be assumed in the judgments of the King's Bench Division and the Court of Appeal.

(*n*) *West Ham Union v. Essex JJ.*, [1896] A. C. 443.

(*o*) In *R. v. Sulop JJ.* (1896), 60 J. P. 552, it was held that if the assessment committee do not appear the guardians cannot be ordered to pay costs. It does not appear clearly from the report of that case whether the committee had obtained the consent of the guardians or not. But if the guardians are not liable when the committee do not appear at all, they can hardly be made liable if the committee appear without their consent.

(*p*) *Leicester Waterworks v. Nuttall* (1878), 4 Q. B. D. 18.

(*q*) *R. v. Essex JJ.*, [1895] 1 Q. B. 38; affirmed in House of Lords, *sub nom. West Ham Union v. Essex JJ. and London County Council*, [1896] A. C. 443.

to their appearance as respondents in the first appeal, but not in the eleven subsequent appeals; although the appellants (not knowing the true state of the facts) had treated the committee throughout as respondents. The clerk of the peace having refused to tax the costs in the eleven appeals, it was held that he was right, and that the assessment committee not having obtained the consent of the guardians were not really respondents, and so were not entitled to costs.

It seems clear that the proper course is for the committee to appear "in the name of the guardians," as is expressly provided by the Act (*r*); but in practice the committee frequently appear in their own name without any objection being taken thereto.

Power of quarter sessions to amend or quash the rate.—The sessions have power either to amend the appellant's assessment "in such a manner only as shall be necessary for giving relief" (*s*), or (if it is necessary to do so) to quash the rate altogether, under s. 6 of the Poor Relief Act, 1743 (*t*); or to amend the rate by inserting the names of persons omitted, or by altering the assessments on persons other than the appellant, or (if it is necessary to do so) to quash the rate altogether, under s. 1 of the Poor Rate Act, 1801 (*u*). Prior to the passing of the latter Act, it had been held that if any person were wrongly omitted from a rate, the sessions could not amend it by inserting his name, but were bound to quash the whole rate (*v*). These decisions are no longer law.

Although the sessions appear to have a discretion either to amend the rate or quash it altogether, yet the proper course appears to be to amend the rate, if that can be done fairly. Thus if one person be wrongly omitted, the proper course is to amend the rate (*y*). But "where a rate contains so many omissions that it can hardly be expected of an appellant that he should have evidence to show the extent to which each person omitted ought to be rated, and where the investigation before the sessions would be likely to exhaust more time than they could reasonably be required to give up, it would not be an improper exercise of their discretion to quash the rate, and make the parish officers do in the end what they ought to have done in the beginning" (*z*). If an

(*r*) See U. A. C. A. Act, 1864, s. 2, *supra*, pp. 590, 591.

(*s*) *Vide infra*, p. 593.

(*t*) 17 Geo. 2, c. 38: see Appendix II., *infra*. The section requires the justices (when they quash a rate) to direct the overseers to make a new rate; but the orders quashing the old rate, and directing a new one to be made, need not be contained in one and the same order: *R. v. Hampshire JJ.* (1864), 33 L. J. M. C. 104.

(*u*) 41 Geo. 3, c. 23: see Appendix II., *infra*.

(*v*) *R. v. Maddern* (1787), 1 T. R. 625; *R. v. Darlington* (1795), 6 T. R. 463. These cases seem to be in conflict with *R. v. Ringwood*, *infra*.

(*y*) *R. v. Ringwood* (1775), Cowp. 326; *R. v. Ambleside* (1812), 16 East 380. In the latter case it is doubtful whether the court were right in assuming that only one person was omitted in fact, but this does not affect the rule of law laid down.

(*z*) *R. v. Hull Dock Co.* (1824), 3 B. & C. 516, at p. 526.

appellant is rated in one sum for property which is rateable, and for other property which is not rateable (*e.g.*, tolls), the proper course is to amend the rate by reducing the amount at which the appellant is rated, and not by striking out the entry relating to him altogether (*a*). And it seems clear that a similar rule should be applied where the appellant is rated in one sum for property which he occupies, and for other property which he does not occupy.

The effect of an order quashing a rate, or reducing an assessment, on rates already paid, has been considered (*b*).

The quarter sessions cannot increase the assessment of the appellant, against which the appeal is brought (*c*); and the assessment committee and the parish officers are bound by the gross value stated in the valuation list and the rate; and if the appellant either does not appeal against the gross value, or abandons the appeal as to the gross value, and contends that sufficient deductions have not been made to arrive at the rateable value, the respondents cannot give evidence to show that the gross value stated in the rate is too low, in order to prove that when the proper deductions have been made from the true gross value, the rateable value stated in the rate is not too high (*d*).

The power of amendment given by s. 1 of the Poor Rate Act, 1801 (*e*), was given to the quarter sessions only, and could not be exercised by the King's Bench on a case stated (*f*). But the Supreme Court of Judicature (Procedure) Act, 1894 (*g*), has extended the powers of the High Court in this respect.

By s. 7 of the Parochial Assessments Act, 1836, the justices in special sessions are given, for the purpose of hearing appeals under that Act, all the powers of amending or quashing the rate possessed by quarter sessions; but as appeals under ss. 6 and 7 of the Parochial Assessments Act, 1836, can be brought only on the ground of "inequality, unfairness, or incorrectness in the valuation

(*a*) *R. v. Bedminster Union* (1876), 45 L. J. M. C. 117. The report of the same case, in 1 Q. B. D. 503, omits the decision on this point.

(*b*) *Vide supra*, p. 584.

(*c*) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 207; *Horton v. Walsall Union*, [1898] 2 Q. B. 237, at p. 243. See also *Mersey Docks v. Birkenhead*, [1901] A. C. 175, at pp. 177, 183. In one case at the London quarter sessions, where a ratepayer appealed against his own assessment, and it appeared that an erroneous (and possibly fraudulent) return as to the rent had been made on behalf of the appellant, the sessions *by consent* ordered the gross value stated in the valuation list to be increased (*Waterlow & Sons v. St. Leonard's, Shoreditch*, Ryde's Rat. App. (1891—1893), 28).

(*d*) *Horton v. Walsall Union*, *supra*; *Denaby and Cadeby Colliery Co. v. Doncaster Union* (1898), 78 L. T. 388; *cf. Brown & Co. v. Rotherham Union* (1900), 64 J. P. 580. Before these decisions, the practice at the London quarter sessions had been to admit evidence as to the true gross value: see *Middle Class Duellings Co. v. St. George's Union*, Ryde's Rat. App. (1891—1893), 61; *Chappell v. St. George's Union*, *ibid.*, p. 65.

(*e*) 41 Geo. 3, c. 23: see Appendix II., *infra*.

(*f*) *R. v. Milton* (1819), 3 B. & Ald. 112.

(*g*) 57 & 58 Vict. c. 16, s. 2: see Appendix II., *infra*.

of hereditaments included in the rate," it seems clear that the special sessions could not amend a rate by inserting persons wrongly omitted, because an appeal on the ground of omission from a rate could not lawfully be before them (*h*).

Where the quarter or special sessions amend a rate, the valuation list must be altered accordingly (*i*).

Questions of practice at the hearing at quarter sessions.—

In this volume no attempt is made to deal exhaustively with the practice at quarter sessions, but a few remarks are here made upon some points which are likely to arise. The effect of standing orders, or practice rules, in force at particular sessions has been already considered (*k*).

Quarter sessions may be held before two justices (*l*). If there are not enough justices present to hold the sessions, there are not enough to adjourn it legally, and every act done subsequently is illegal (*m*). For the quarter sessions, when they have once dropped, cannot be resumed (*n*). In the absence of the recorder and deputy recorder, the mayor must open and adjourn the court, in a quarter sessions borough (*o*).

The quarter sessions may alter their judgment at any time during the continuance of the same sessions (*p*), provided that the court be constituted of the same justices (*q*), but no subsequent sessions can add to, or vary, an order made by previous sessions (*r*).

If the justices are equally divided, nothing can be done on the appeal, and the proper course is to adjourn it to the next sessions (*s*), for the chairman has no casting vote (*t*). It is not always easy to set aside a decision, entered as the judgment of the sessions, when the justices were in fact equally divided. The King's Bench have authority to interfere for the purpose of seeing that no illegal practice prevails at the sessions to prevent the hearing of an appeal (*u*). But if the appeal has been heard, the power of

(*h*) *Vide supra*, pp. 538, 539.

(*i*) See U. A. C. Act, 1862, s. 22, in Appendix II.

(*k*) *Vide supra*, pp. 584, 585.

(*l*) *R. v. Carmarthen JJ.* (1821), 4 B. & Ald. 291.

(*m*) *R. v. Westington* (1749), 2 Const. 733; *cf. R. v. Middlesex JJ.* (1834), 5 B. & Ad. 1113.

(*n*) *R. v. Polstead* (1747), 2 Str. 1263.

(*o*) See the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 167 (1).

(*p*) *St. Andrew's, Holborn v. St. Clement Danes* (1703), 2 Salk. 494; *Battersea v. West Ham* (1698), 5 Mod. 396; *R. v. Leicestershire JJ.* (1813), 1 M. & S. 442.

(*q*) *R. v. Assessment Sessions*, Ryde's Rat. App. (1886—1890), 268. See also pp. 599, 600, *infra*.

(*r*) *R. v. Staffordshire JJ.* (1857), 7 E. & B. 935; 26 L. J. M. C. 179; *infra*, p. 599.

(*s*) *Bodmin v. Warlign* (1749), 2 Const. 733; *et cf. R. v. Westmoreland JJ.* (1755), *ibid.*, p. 733; *R. v. Leicestershire JJ.* (1813), 1 M. & S. 442.

(*t*) *R. v. Fladbury* (1839), 10 A. & E. 706. The Valuation (Metropolis) Act, 1869, s. 26, gave the chairman of the assessment sessions a casting vote; *sed vide infra*, pp. 671, 672.

(*u*) *R. v. West Riding JJ.* (1833), 5 B. & Ad. 667; *et vide supra*, p. 585

interference to prevent a wrong decision from being recorded, is much more limited. Thus in *R. v. Monmouthshire JJ. (x)*, which was an appeal against an order of removal, the justices being equally divided had quashed the order; the King's Bench refused a *mandamus* to hear and determine, on the ground that when once the sessions had given their judgment, the King's Bench could not compel them to correct it if it appeared to be erroneous. And in *R. v. Leicestershire JJ. (y)*, eight justices voted for confirming, and seven for quashing, an order of removal, and after the judgment had been pronounced it was discovered that one of the eight was disqualified (thereby making the votes equal), and the clerk by mistake entered the judgment for quashing the order. An ineffectual application had been made to the chairman of the sessions to correct the mistake (z); but the King's Bench refused to interfere. So, too, in *R. v. Monmouthshire JJ. (a)*, the justices, being equally divided, adjourned the appeal, although one of the justices was disqualified, and therefore in point of law there was a majority in favour of the appellants; but the King's Bench refused to set aside the order for an adjournment, holding that the order was within the powers of quarter sessions, and that the King's Bench had no power to review an erroneous judgment, if the sessions had jurisdiction to give it.

The effect of these cases appears to be that if any objection is to be taken to the judgment of the sessions, on the ground that it is not the judgment of the majority of the court, it should be taken before the justices, and while the sessions are still continuing.

Objections to individual justices on the ground that they are disqualified (by interest or otherwise) for hearing the appeal have been already considered (b).

Where an adjournment becomes necessary, it is important to note the distinction between an adjournment of the sessions and an adjournment of the hearing of the appeal to another independent sessions. The adjournment of the sessions itself cannot be to a time beyond that fixed for holding another original sessions (c). But the hearing of an appeal may be adjourned from one quarter sessions to the next quarter sessions but one (*e.g.*, from April to Michaelmas) (d); and apparently an adjournment for even longer periods is legal, provided, of course, that the adjournment is *bonâ fide*, and reasonably necessary.

(x) (1825), 4 B. & C. 844.

(y) (1813), 1 M. & S. 442.

(z) The report is not very clear, but it may be inferred from the judgments that the application was not made until the sessions had come to an end.

(a) (1828), 8 B. & C. 137.

(b) *Vide supra*, pp. 586—590.

(c) *R. v. Grince* (1717), 2 Const. 730. This case was not dissented from in *R. v. Westmoreland JJ., infra*. See also p. 597, note (m), *infra*.

(d) *R. v. Westmoreland JJ.* (1868), L. R. 3 Q. B. 457. See also p. 597, note (m), *infra*.

Reference to arbitration.—Before the passing of the Quarter Sessions Act, 1849 (*e*), the quarter sessions had no power to refer a case to arbitration (*f*). But by ss. 12 and 13 of that Act a reference may now be ordered *by consent* of the parties: under the former section the order of a judge, but no order of quarter sessions is necessary: under the latter section the reference is under an order of quarter sessions. Where a reference (under either section) becomes abortive (by the death of the arbitrator or otherwise), the King's Bench may order the quarter sessions to hear the appeal under s. 14 of the same Act. It is desirable that the order of reference should provide for the costs, for although the Arbitration Act, 1889 (*g*), seems to apply to the hearing of the arbitration, it is not clear that its effect is to incorporate with the order of reference the clause giving the arbitrator power to award costs. The order of reference should also declare by whom the rate is to be amended, if the appeal succeeds, and whether the arbitrator, or the sessions which records his award, is to have power to order repayment of the over-payments (if any) made before the award is published (*h*).

It must be noticed that, outside the metropolis, the quarter sessions have no such power as is given by s. 36 of the Valuation (Metropolis) Act, 1869 (*i*), to appoint a valuer on the application of any of the parties to an appeal.

An extremely difficult question arises with regard to an appeal which is referred to arbitration, viz., whether it is necessary to respite the appeal from session to session until the award is made. In *R. v. West Riding J.J.* (*k*), where the order of reference was made under s. 13 of the Quarter Sessions Act, 1849, COCKBURN, C.J., seems to have held that it was not only unnecessary, but improper, to respite the appeal from time to time, because the session which entered the award had a merely ministerial duty to perform. But in *R. v. Middlesex J.J.* (*l*), where the reference was made under the same section, BLACKBURN, J., said that the adjournment of the appeal was “probably unnecessary, because probably at any future quarter sessions the court would be obliged to enter [the award] as a judgment without any adjournment; but certainly it would

(*e*) 12 & 13 Vict.: 45 (commonly called Baines' Act): see Appendix II., *infra*.

(*f*) *R. v. Middlesex J.J.* (1871), L. R. 6 Q. B. 220, at p. 222, following *Thorp v. Cole* (1835), 2 C. M. & R. 367. But in an old case where the sessions by consent referred an appeal to three justices (before whom the parties appeared), and afterwards adopted the opinion of the referees, the judges refused to set aside the decision: *R. v. Northamptonshire J.J.* (1777), Cald. 30.

(*g*) 52 & 53 Vict. c. 49: see ss. 2, 24, and Sched. I., rule (i), which are considered *infra*, p. 601.

(*h*) See *North Eastern Rail. Co. v. York Union* (1902), Ryde and Konstam's Rat. App. (1894—1904), 99; *infra*, p. 597.

(*i*) See Appendix II., *infra*: see also p. 688.

(*k*) (1865), 34 L. J. M. C. 142, at pp. 143, 144; 6 B. & S. 531; 29 J. P. 324.

(*l*) (1871), L. R. 6 Q. B. 220, at p. 222; 36 J. P. 55.

do no harm to enter these adjournments, and it would make the record look more regular to have the continuances upon it." If the true construction of s. 13 of the Quarter Sessions Act, 1849, is that the sessions, by making an order of reference, "substitute an arbitrator for themselves," and are then *functi officio*, as was said by COCKBURN, C.J., in *R. v. West Riding JJ.*, it seems to follow that a respite to the next sessions is improper. Again, the object of respiting an appeal is (speaking generally) to give later sessions jurisdiction, where they would not have an original jurisdiction, because they are not "the next practicable sessions." But in the case of an appeal referred to arbitration, original jurisdiction to make the ministerial order, adopting the award, seems to be given by s. 13 of the Quarter Sessions Act, 1849: and it is submitted that no respite is required. Further, this view is supported by s. 14, which provides that if the reference becomes abortive, the King's Bench may order the quarter sessions to hear the appeal; if the sessions were intended, by means of successive respites, to retain control over the appeal, it might have been expected that the Act would have directed an application to be made to the sessions to hear it (*m*).

What is said above as to the necessity for a respite is equally applicable where the reference is made, by order of a judge, under s. 12 of the Quarter Sessions Act, 1849.

In *North Eastern Rail. Co. v. York Union* (*n*), an order had been made under s. 12 of the Quarter Sessions Act, 1849, referring appeals to an arbitrator, under which award the assessments were eventually declared to be too high. Neither the order of reference, nor the award, referred to the repayment of the rates appealed against, which in the meantime had been paid. The quarter sessions for the West Riding held (on the application to them to enrol the award) that they had power to order repayment of the sums overpaid, notwithstanding the dicta in *R. v. West Riding JJ.* (*o*), and *R. v. Middlesex JJ.* (*p*), cited above.

Costs at quarter sessions.—Under s. 4 of the Poor Relief Act, 1743 (*q*), "the justices may award and order to the party for whom the appeal shall be determined reasonable costs." And by s. 5 of the Quarter Sessions Act, 1849 (*r*), "upon any appeal to

(*m*) In a recent case, in the writer's experience, where a railway company entered appeals in respect of a line extending through several parishes, and the appeals were referred under s. 12 of the Quarter Sessions Act, 1849, and the arbitration was expected to last some time, the parties agreed to an order of repite to a sessions in the remote future, passing over two or three intervening quarter sessions. Such an order is no doubt not commonly made, but it is submitted that it is perfectly legal: see *R. v. Westmoreland JJ.* (1868), L. R. 3 Q. B. 457; *et vide supra*, p. 595.

(*n*) (1902), Ryde and Konstam's Rat. App. (1894—1904), 99; 66 J. P. 457.

(*o*) (1865), 34 L. J. M. C. 142; *supra*, p. 596.

(*p*) (1871), L. R. 6 Q. B. 220; *supra*, p. 596.

(*q*) 17 Geo. 2, c. 38: see Appendix II., *infra*.

(*r*) 12 & 13 Vict. c. 45: see Appendix II., *infra*.

any court of quarter sessions the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable." The latter Act gives a cumulative authority to make an order as to costs, and does not take away the power given by the earlier Act ; so that the order may be made and the costs may be recovered under either Act (*s*).

It must be noticed that the costs do not follow the event without an order (*t*) ; and that, under either Act, the court have a discretion as to making any order at all, but that if they do make an order, it must be an order in favour of the successful party. Therefore, if the appellant succeeds to any extent, the court cannot order him to pay any part of the respondent's costs (*u*), with this exception, that by s. 4 of the Quarter Sessions Act, 1849 (*v*), if the notice of appeal includes any grounds which shall, in the opinion of the court, be frivolous or vexatious, the appellant shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondents in disputing such grounds of appeal.

A standing order of quarter sessions, that costs should follow the event, unless the court should make an order to the contrary, was held sufficient without an express order for costs in *Freeman v. Read* (*x*), but it must be noticed that the standing order was known to both parties.

The *determination* of the appeal was formerly held (*y*) to be a condition precedent to the power to give costs under the Poor Relief Act, 1743 (*z*), so that if the appellant, after giving notice of appeal, did not enter it, the respondents could not get their costs. But the law has been altered by s. 6 of the Quarter Sessions Act, 1849 (*a*), which provides that the quarter sessions, upon proof of notice of appeal having been given, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the parties receiving the same such costs and charges as by the said court shall be thought reasonable and just. And it has been held that under s. 5 of the same Act (cited above) the quarter sessions have jurisdiction to give costs even where they have no jurisdiction to hear the appeal on its merits (*b*).

(*s*) *R. v. Huntley* (1854), 3 E. & B. 172. (*t*) But see *Freeman v. Read*, cited below.

(*u*) This view has been recently acted upon at quarter sessions, in *Kirby v. Hunslet Union*, March 31st, 1904, before the Recorder of Leeds (not reported ; from the writer's MS. notes).

(*v*) See Appendix II., *infra*.

(*x*) (1860), 9 C. B. (N.S.) 301.

(*y*) *R. v. Essex J.J.* (1800), 8 T. R. 583. But if the appeal was entered and abandoned, it was held that costs could be given up to the date of notice of abandonment: *Ex parte Holloway* (1831), 1 D. P. C. 26. It is believed that costs are now generally given on this basis.

(*z*) 17 Geo. 2, c. 38, s. 4 : see Appendix II.

(*a*) 12 & 13 Vict. c. 45 : see Appendix II.

(*b*) *R. v. Pudwick* (1858), 27 L. J. M. C. 113.

The powers of quarter sessions under the Parochial Assessments Act, 1836, to give costs on appeals from special sessions have been already considered (*c*). Having regard to the decision in *R. v. Huntley* (*d*), it is submitted that s. 6 of the Parochial Assessments Act, 1836, which gives power to deal with the costs of appeals from special sessions, is not repealed by the sections of the Quarter Sessions Act, 1849, relating to costs, and that the powers given under the latter Act are cumulative.

Order for costs against an assessment committee or overseers.—Where the assessment committee and the overseers (or parish council or other authority as the case may be) appear separately as respondents, the order for costs, if made against the respondents, should state which of the respondents is to pay them : otherwise there may be some difficulty in recovering them. The recovery of costs is considered below (*e*).

Where the assessment committee appear as respondents without obtaining the consent of the guardians, they are not entitled to costs, because they are not really respondents (*f*). If the assessment committee do not appear at all as respondents, an order for costs cannot be made against them or against the guardians (*g*). In a parish having a parish council no order for costs can be made against the overseers, because their liabilities with respect to appeals against poor rates are transferred to the parish council by s. 6 (1) (*c*) of the Local Government Act, 1894 (*h*). Having regard to the limitation imposed by s. 11 of that Act upon the expenditure of a parish council, there may be some difficulty in enforcing an order for costs against a parish council (*i*).

Subsequent sessions cannot give costs.—An order for costs can be made only at the sessions which hear the appeal ; and, where the sessions are not adjourned, an order for costs made at a subsequent session is invalid (*j*). But where an order for costs was made on an appeal, and the sessions were adjourned, and in the meantime the costs were taxed, the order being formally drawn up on the day of the adjournment, and the exact amount of the costs inserted in the order, the Queen's Bench held that the order for costs was valid, even though the court at the adjournment

(*c*) *Vide supra*, pp. 548, 549.

(*d*) (1854), 3 E. & B. 172, *supra*, p. 598.

(*e*) *Vide infra*, pp. 603—607.

(*f*) *West Ham Union v. Esser JJ. and London County Council*, [1896] A. C. 443 ; *supra*, p. 591.

(*g*) *R. v. Salop JJ.* (1896), 60 J. P. 552 ; *supra*, p. 591, note (*o*).

(*h*) See *R. v. Salop JJ.*, *supra*, and compare *R. v. Teckesbury JJ.*, [1903] 1 K. B. 39 ; *Ryde and Konstam's Rat. App.* (1894—1904), 312 ; *infra*, p. 604.

(*i*) See pp. 604, 605, *infra*.

(*j*) *R. v. Staffordshire JJ.* (1857), 26 L. J. M. C. 179 ; *R. v. Hampshire JJ.* (1862), 32 L. J. M. C. 46 ; *Midland Rail. Co. v. Edmonton Union*, [1895] 1 Q. B. 357, at p. 362. Compare a similar decision as to the powers of the assessment sessions in the metropolis : *Hodge & Sons v. Poplar Union*, *Ryde's Rat. App.* (1886—1890) 284.

consisted of different magistrates from those who heard the case on the merits (*k*). In the cases cited in the note, the decision at the adjourned sessions was a merely ministerial adoption of the order for costs already made at the former sitting. But it has been held that if sessions are adjourned, and at the adjournment the court consists of different justices from those who heard the appeal on the merits, and made the original order for costs, the court thus differently constituted cannot vary the original order for costs, so as to make the costs payable by different parties, such an order being a judicial order (*l*). This decision is consistent with the rule that the original sessions, and all the adjournments, are regarded by the law as constituting one day, so that the justices (*i.e.*, the justices who heard the appeal originally) may re-consider their decision at any time during the continuance of the sessions (*m*).

Grounds for giving costs.—The question whether the sessions will exercise their power to give costs in any particular case depends upon the special circumstances of that case, and upon the practice of the particular court: and such a question can hardly be usefully considered in this volume (*n*). There is, however, one point of general application which may be referred to.

Where an appeal is allowed it is sometimes contended on behalf of an assessment committee that the appellant should be deprived of his costs, on the ground that he gave no information, or insufficient information, to the committee when making his objection to the valuation list as a preliminary step towards appealing. To this contention the answer is generally made that the appellant is not bound to give the committee any evidence at all on making his objection (*o*), and that he ought not to be punished for failing to do what he is not bound to do. But this answer hardly meets the point. The question is not (as in the case cited in the note) whether the appellant is bound to give evidence before the committee in order to give him a right of appeal to quarter sessions. The right of appeal is admitted: but costs are given to a successful appellant in order to indemnify him (more or less completely) against expenses which he has been obliged to incur in consequence of the mistake of the assessment committee. Now *if* the com-

(*k*) *R. v. Hampshire JJ.* (1864), 33 L. J. M. C. 104. A similar decision was given in *Rawnsley v. Hutchinson* (1871), L. R. 6 Q. B. 305; 40 L. J. M. C. 97; 35 J. P. 501, where the sessions were adjourned from Leeds to Sheffield, so that it is probable (though it is not expressly stated) that the court was differently constituted on the two occasions. Compare also *R. v. Mortlock* (1845), 7 Q. B. 459. As to taxation of costs out of session, *vide infra*, p. 602.

(*l*) *R. v. Assessment Sessions*, Ryde's Rat. App. (1886—1890), 268. See also *R. v. Staffordshire JJ.* (1857), 26 L. J. M. C. 179, at p. 181.

(*m*) See *St. Andrew's, Holborn v. St. Clement Danes* (1703), 2 Salk. 494, *supra*, p. 594; and *R. v. Surrey JJ.* (1813), 1 M. & S. 479; *supra*, p. 570.

(*n*) In Ryde's Rat. App. (1886—1890), and (1891—1893), many cases may be found illustrating the principles on which the London quarter sessions have acted.

(*o*) See *R. v. Essex JJ.* (1882), 46 J. P. 724, *supra*, p. 526.

mittee can prove that the mistake remained uncorrected solely because the appellant did not furnish information, which he could easily have furnished, it may not unfairly be contended for the respondents that the appellant has only himself to blame, and therefore ought not to be indemnified for expenses which he need not have incurred. A distinction must, of course, be drawn between different classes of cases. In the case of a railway or a dock, adequate information as to receipts and expenses in a particular parish can often be furnished only at considerable expense, which the appellant cannot get back, and this may be a sufficient reason for refusing to give what is asked for. But where the information desired relates to the rent paid by the appellant, the cost of land or buildings, or the contents of a written document in the appellant's possession or control, if the appellant refuses to give what could be easily ascertained, and must be material to the question raised by the appeal, the refusal may (in some cases at least) be a good ground for not giving the appellant his costs if he succeeds.

Costs where appeal is referred to arbitration.—Where a reference to arbitration is ordered under the Quarter Sessions Act, 1849 (*p*), it is desirable that the order of reference should provide for the costs. For before the passing of the Arbitration Act, 1889, it was held that if an order of reference under s. 13 of the Act of 1849 was silent as to the costs, no order could be made for the costs of the reference either by the arbitrator (*q*) or by a subsequent court of quarter sessions (*r*); and that a subsequent court could not make an order for the costs of the appeal (*s*). And it is not clear whether the Arbitration Act, 1889 (*t*), has rendered these cases obsolete. By s. 24 of that Act, it is applied to every arbitration under any Act as if the arbitration were pursuant to a submission, except in so far as the Act of 1889 is inconsistent with such other Act. By s. 2 of the Act of 1889, “a submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule” to that Act, which (*inter alia*) puts the costs of the reference and award in the discretion of the arbitrator. The effect of these enactments may be either (1) to incorporate the provisions contained in the first schedule of the Arbitration Act, 1889, with the order of reference under the Quarter Sessions Act, 1849 (so far as they are consistent with such order), or (2) to make the Arbitration Act, 1889, apply to all steps in the arbitration *subsequent* to the making of the order of reference, leaving that order unaffected.

(*p*) 12 & 13 Vict. c. 45, ss. 12, 13: see Appendix II., and p. 596, *supra*.

(*q*) *West London Rail. Co. v. Fulham Union* (1870), L. R. 5 Q. B. 361.

(*r*) *R. v. West Riding JJ.* (1865), 34 L. J. M. C. 142.

(*s*) *R. v. Middlesex JJ.* (1871), L. R. 6 Q. B. 220.

(*t*) 52 & 53 Vict. c. 49.

If the latter construction is correct, the cases above referred to are still good law.

In order to get rid of doubt as to the question whether Schedule I. of the Arbitration Act, 1889, applies or not, it is also advisable to provide expressly for taxation of costs. Apart from that Act it appears to depend upon the terms of the order of reference, whether the costs are to be taxed by the clerk of the peace or by the arbitrator (*u*).

Taxation of costs at quarter sessions.—The common, if not the universal, practice is to consent to tax out of session. Where such consent is given, it is not necessary to adjourn the sessions, but the costs are taxed after the sessions are over, and the exact amount ascertained by taxation is inserted in the formal order, which is drawn up and dated as of the day when the order for costs was pronounced. But “the ascertaining of the costs is a judicial act to be done by the court, and, unless consent is given, the clerk of the court has no jurisdiction to entertain the question. When the sessions are being held he can, of course, under the supervision and direction of the magistrates act as their officer, but it is as their officer only” (*x*). “The court cannot delegate their authority, and cannot order a party to pay costs to be taxed by the clerk of the peace” (*y*). Consent to tax out of session being necessary, in order to give validity to such a taxation, it seems that there must be some evidence of consent, and it cannot be implied from mere silence, when consent is not asked and is not given (*z*); but the practice to tax out of session is so common, that slight evidence of consent is sufficient (*a*).

It has been held at quarter sessions (*b*) where consent had been given to tax out of session, and the taxation had taken place, and a motion was made at a subsequent session to review the taxation, that the subsequent session had no jurisdiction to review the taxation, or to give costs of the motion to review taxation (*c*).

In *Southampton Gas Co. v. Southampton Guardians* (*d*), an appeal was referred to an arbitrator, and by the order of reference

(*u*) See *Southampton Gas Co. v. Southampton Guardians* (1877), 2 Q. B. D. 371; *Re Huntley* (1855), 1 E. & B. 787.

(*x*) *Midland Rail. Co. v. Edmonton Union*, [1895] 1 Q. B. 357, at p. 361. See also *R. v. Long* (1841), 1 Q. B. 740, at p. 746; and *R. v. Winder*, [1900] 2 Q. B. 666.

(*y*) *Sellwood v. Mount* (1841), 1 Q. B. 726, at p. 735.

(*z*) *Midland Rail. Co. v. Edmonton Union*, [1895] 1 Q. B. 357, at p. 362.

(*a*) *Midland Rail. Co. v. Edmonton Union*, [1895] A. C. 485, at p. 488. See also *Freeman v. Read* (1860), 9 C. B. (N.S.) 301; *R. v. Mortlock* (1845), 7 Q. B. 459; in both of which cases the necessity of proving consent was recognised, though very slight evidence of consent was held sufficient.

(*b*) *Blackpool Tower Co. v. Fylde Union* (1903), 67 J. P. 379.

(*c*) The decision as to the costs of the motion may be doubted: see *R. v. Pudwick* (1858), 27 L. J. M. C. 113; *supra*, p. 598; and compare *Pringle v. Secretary of State for India* (1888), 40 Ch. D. 288; but with the latter case compare *Garnett v. Bradley* (1878), 3 App. Cas. 944, at p. 962.

(*d*) (1877), 2 Q. B. D. 371.

the costs of the appeal and reference were to be in the discretion of the arbitrator, but the order did not expressly provide for taxation. It was held by the Queen's Bench Division that it was implied in the terms of the reference that the costs should be taxed out of session. From the same case it also appears that parties may be estopped by their conduct subsequently to the sessions at which the order is made, from insisting upon an objection to taxation out of session. In the case cited a compromise with reference to subsequent rates had been agreed to, upon the basis that no objection would be taken to taxation of costs out of session (*e*).

Recovery of costs.—A person who is ordered by quarter sessions to pay costs, and who disobeys the order, may be proceeded against by indictment (*f*). But this method of recovery is practically obsolete. By s. 4 of the Poor Relief Act, 1743 (*g*), the sessions are empowered to give costs in an appeal against a poor rate, in the same manner as under 8 & 9 Will. 3, c. 30, under which Act (see s. 3) costs are recoverable by distress and (in default of distress) by imprisonment. By s. 5 of the Quarter Sessions Act, 1849 (*h*), costs are made recoverable in the manner provided by the Summary Jurisdiction Act, 1848 (11 & 12 Viet. c. 43), which Act by s. 27 provides that the order shall direct the costs to be paid to the clerk of the peace, to be by him paid over to the party entitled to the same, and shall state within what time the costs shall be paid; and if they are not paid within the time limited, and there are no recognizances, payment may be enforced by distress and imprisonment, a certificate of non-payment being first obtained from the clerk of the peace. The sections above referred to give alternative remedies, and the order may either direct the costs to be paid to the party entitled to them (*i*), or to the clerk of the peace (*k*). And by s. 18 of the Quarter Sessions Act, 1849, the order of quarter sessions giving costs may be removed into the King's Bench, and may be enforced in the same manner as a rule made by the King's Bench.

Recovery of costs by or against overseers or parish council.—When an order for costs is made against overseers (*l*), the proper course appears to be to proceed under s. 18 of the Quarter Sessions Act, 1849; and, after removing the order of the

(*e*) Cf. *London and North Western Rail. Co. v. Bedford* (1852), 17 Q. B. 978, *infra*, p. 619.

(*f*) See *R. v. Mortlock* (1845), 7 Q. B. 459.

(*g*) 17 Geo. 2, c. 38; see Appendix II.

(*h*) 12 & 13 Viet. c. 45; see Appendix II.

(*i*) *R. v. Huntley* (1854), 3 E. & B. 172.

(*k*) *Gay v. Matthews* (1863), 33 L. J. M. C. 14.

(*l*) It cannot be made against overseers where there is a parish council: see *R. v. Salop JJ.* (1896), 60 J. P. 552; *supra*, p. 599. See also *R. v. Truesbury JJ.*, [1903] 1 K. B. 39; *Ryde & Konstan's Rat. App.* (1894—1904), 312; *infra*, p. 604.

sessions into the King's Bench Division (on an *ex parte* application in chambers) to apply for a *mandamus* directing the overseers to pay the sum named in the order, and if necessary to make a rate for the purpose (*m*). It is desirable that there should be as little delay as possible in recovering costs against overseers, as difficulties may arise from the lapse of time and the appointment of new overseers (*n*).

It will be best to notice first the position of the overseers with regard to costs, before considering the rights and liabilities of the parish council, who have taken their place as respondents to a rating appeal, in a rural parish. The right of the overseers to recover costs, and their liability to pay them, depend not upon express enactment, but upon the provisions implied in the various statutes giving them the right to appeal, or directing notice to be given them (*o*): for without the right to defray expenses of litigation, they could not discharge their statutory duties. Although the overseers cannot abandon a rate, so as to render it a nullity, after it has been allowed by the justices and duly published (*p*), yet they can abandon their defence of it, and if they needlessly incur costs in defending a rate which is clearly bad, the costs may be disallowed in the overseers' accounts (*q*).

The Local Government Act, 1894 (*r*), by s. 6 (1) (*c*), transfers to the parish council of every rural parish, the powers, duties, and liabilities of the overseers, or of the churchwardens and overseers, with respect to (*inter alia*) appeals in respect of the poor rate. In *R. v. Tewkesbury JJ.* (*s*), it was held that the effect of this was to make it the duty of the parish council to appear on the appeal in support of the rate. From this it seems to follow (at first sight at least) that the parish council has the same right as the overseers had to recover costs (if the appeal fails), and is under the same liability as the overseers were under to pay costs (if the appeal succeeds). There is, however, a difficulty involved in the substitution of the parish council for the overseers; for the Local

(*m*) This procedure was followed, and a *mandamus* in this form granted, in *Lea Bridge District Gas Co. v. Overseers of Walthamstow* (unreported: from the writer's MS. notes); *Q. B. D.* December 15th, 1890, *coram* STEPHEN and CHARLES, JJ. See also *Chambres v. Jones* (1850), 5 Ex. 229. Instances of the issue of a *mandamus* to make a rate, where money was wanted for the relief of the poor, will be found in *R. v. Edlaston* (1836), 1 N. & P. 20; *R. v. Gadsby* (1837), 1 N. & P. 572; *R. v. Soham* (1830), 8 L. J. (o.s.) M. C. 79.

(*n*) See the Poor Law Audit Act, 1848 (11 & 12 Vict. c. 91), ss. 1, 2, in Appendix II., *infra*; and *Ex parte Overseers of Fletton* (1860), 29 L. J. M. C. 205.

(*o*) *R. v. Inhabitants of Essex* (1792), 4 T. R. 591; and *cf. R. v. Tower Hamlets (Commissioners of Sewers)* (1830), 1 B. & Ad. 232; *R. v. White* (1884), 14 Q. B. D. 358.

(*p*) *R. v. Cambridge JJ.* (1834), 2 A. & E. 370.

(*q*) *R. v. Fench* (1841), 2 Q. B. 308; *R. v. Great Western Rail. Co.* (1849), 13 Q. B. 327.

(*r*) See Appendix II., *infra*.

(*s*) [1903] 1 K. B. 35; Ryde & Konstam's Rat. App. (1894—1904), 312.

Government Act, 1894, s. 11 (1) provides that "a parish council shall not, without the consent of a parish meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan." And by s. 11 (3), the sum raised in any local financial year by a parish council for their expenses (with exceptions not now material) shall not exceed a sum equal to sixpence in the pound on the rateable value of the parish at the commencement of the year. It is difficult to determine what is the combined effect of s. 6 and s. 11. First as to costs incurred by the parish council: it may be said on the one hand that, as the overseers were impliedly authorised to incur all costs reasonably necessary in defending the rate under appeal, the transfer of the powers and duties of overseers to the parish council authorises the parish council to incur the same costs: on the other hand, it may be contended that the transfer of the implied power to incur costs must be subject to the express limitations imposed by s. 11. Next, as to the liability to pay costs to the appellants, if they succeed: if quarter sessions order the parish council to pay costs, which are taxed at a sum which will involve a rate exceeding threepence in the pound, it is difficult to suppose that Parliament intended in passing s. 11 (1) of the Local Government Act, 1894, that the liability to pay costs should only be enforced, if the parish meeting of the parish liable to pay gave their consent to the payment. Again, the prohibition contained in sub-ss. (1) and (3), against incurring expenses beyond specified limits, seems very inappropriate to a liability to pay costs, the amount of which cannot be known beforehand, and which are ordered to be paid as the result of an appeal which the parish council have determined to oppose, in the belief that they are right in doing so, and in the expectation that they will not have to pay the appellant's costs. It may, perhaps, be held that the limitation imposed on the expenses of a parish council under s. 11 of the Local Government Act, 1894, applies to the costs incurred by them as respondents, but not to the costs which they may be ordered to pay to a successful appellant.

Assuming that the difficulties above referred to (as to amount) do not arise, the proper course to adopt in order to recover costs against a parish council (assuming that they cannot be recovered by distress) appears to be to remove the order of the sessions into the King's Bench Division, under s. 18 of the Quarter Sessions Act, 1849 (*t*), and then to apply for a *mandamus* directing the parish council to pay the sum named in the order, and to issue a precept to the overseers commanding them to pay the sum out of the poor rate, and, if necessary, to make a rate for the purpose.

(*t*) *Vide supra*, p. 603. The section is set out in Appendix II.

Costs ordered to be paid by an assessment committee.—Costs cannot be recovered against an assessment committee, or against the members of the committee individually (*u*). Where the committee have appeared as respondents to an appeal “with the consent of the guardians, and in the name of the guardians” (*v*), costs can be recovered by (or against) the guardians (*y*), but it seems that they cannot be recovered otherwise. The proper method of recovering costs against a metropolitan vestry (which in some parishes took the place of the guardians, under the Valuation (Metropolis) Act, 1869), was discussed at some length (though no decision was given by the Queen’s Bench) in *Fulham Union v. St. Mary Abbotts, Kensington* (*z*).

The time within which costs can be recovered against guardians is limited by s. 1 of the Poor Law (Payment of Debts) Act, 1859 (*a*), under which every debt, claim or demand must be paid within the half year in which it is incurred or becomes due, or within three months afterwards, unless the Local Government Board extend the time. But by s. 4 of the same Act, where a claimant “commences proceedings” within the time limited by s. 1 (or the time extended thereunder), and “with due diligence (*b*), prosecutes such proceedings to judgment,” the judgment may be satisfied notwithstanding the expiry of the times above-mentioned. In *West Ham Union v. St. Matthew, Bethnal Green* (*c*), it was held that, where the House of Lords allowed an appeal with costs, until the amount of the costs had been ascertained by taxation, there was no “debt, claim, or demand, incurred or become due” within s. 1 of the Poor Law (Payment of Debts) Act, 1859. The same rule applies where the costs are given by the Court of Appeal, or by any other court (*d*). In *Midland Rail. Co. v. Edmonton Union* (*e*), it was held that the words “commence proceedings” in s. 4 of the Poor Law (Payment of Debts) Act, 1859, do not refer to the application for a taxation of the costs at quarter sessions, but to the commencement of an action or some other proceedings, resulting in a judgment or in a final settlement equivalent to a

(*u*) *Leicester Waterworks v. Nuttall and Barrow-on-Soar Union* (1878), 4 Q. B. D. 18.

(*v*) See U. A. C. A. Act, 1864, s. 2, in Appendix II., *infra* : see also, p. 591, *supra*.

(*y*) *West Ham Union v. Essex JJ. and London County Council*, [1896] A. C. 443 : *R. v. Salop JJ.* (1896), 60 J. P. 552 ; *supra*, p. 591, note (*o*).

(*z*) Ryde’s Rat. App. (1886—1890), 86, at p. 93.

(*a*) 22 & 23 Vict. c. 49.

(*b*) As to what is due diligence, see *Rhodes v. Pateley Bridge Union* (1884), 51 L. T. 235 ; 48 J. P. 168.

(*c*) [1896] A. C. 477 ; following the opinion of Lord WATSON, in *Midland Rail. Co. v. Edmonton Union*, [1895] A. C. 485, at p. 493 ; and of Lord HALSBURY in the same case in the Court of Appeal, [1895] 1 Q. B. 357, at p. 363.

(*d*) *Manchester, Sheffield and Lincolnshire Rail. Co. v. Doncaster Union*, [1897] 1 Q. B. 117.

(*e*) [1895] A. C. 485.

judgment. And in the same case Lord HERSCHELL, L.C., said of the Poor Law (Payment of Debts) Act, 1859 (*f*), "the enactment is not in the nature of a statute of limitations [of which the guardians may decline to avail themselves]. It is a fetter on the action of the guardians, a prohibition against payment after a certain date."

Special provisions are contained in s. 5 of the Poor Law (Payment of Debts) Act, 1859, as to the time within which the bill of costs of any solicitor retained by guardians may be paid.

(*f*) [1895] A. C., at p. 491. The passage cited was confirmed by Lord HERSCHELL in *West Ham Union v. St. Matthew, Bethnal Green*, [1896] A. C. 477, at p. 485.

CHAPTER XXX.

APPEAL FROM QUARTER SESSIONS.

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Decisions on preliminary points.—There is no such thing as an “appeal,” in the strict technical sense of the word, from a decision of quarter sessions, either on the merits of an appeal against a rate, or on a preliminary question of jurisdiction to hear such an appeal (*a*). But, in substance, the law gives a remedy, which is as effective as an “appeal,” on *all* questions of jurisdiction, and also (*provided the quarter sessions will agree to state a case*) on decisions on the merits of an appeal.

As to decisions on preliminary points : if the court of quarter sessions refuses to exercise jurisdiction when it has it, the King's Bench will by *mandamus* compel that court to hear and determine the appeal (*b*). And if the quarter sessions exercise powers in excess of their jurisdiction, or where they have none, the King's Bench will bring up the proceedings by a writ of *certiorari* and quash them ; for “there is inherent in the Court of King's Bench authority to bring before it by writ of *certiorari*, save where the writ is taken away by statutory enactment or charter, the proceedings of any court of inferior jurisdiction, with a view to quash such proceedings. But this applies only where there is some defect of jurisdiction, or informality or defect apparent on the face of the proceedings” (*c*). If the sessions have jurisdiction to hear an appeal and do so, but decide wrongly, the King's Bench will not interfere either by *mandamus* (*d*) or *certiorari* (*e*).

(*a*) *R. v. Overseers of Walsall* (1878), 3 Q. B. D. 457, at p. 464.

(*b*) *Ibid.*, 3 Q. B. D., at p. 468.

(*c*) 3 Q. B. D. 457, at pp. 464, 471, 472.

(*d*) *R. v. Leicestershire JJ.* (1813), 1 M. & S. 442 ; *R. v. Monmouthshire JJ.* (1825), 4 B. & C. 844 : *vide supra*, p. 595.

(*e*) *R. v. Monmouthshire JJ.* (1828), 8 B. & C. 137 : *supra*, p. 595.

No writ of *certiorari* will be granted unless it is applied for within six calendar months after the order of the sessions is made, and unless notice is given to the justices by whom such order was made (*f*).

The King's Bench also have power to issue a writ of prohibition to prevent a court of quarter sessions from exceeding the limits of its jurisdiction (*g*). In *Liverpool Gas Co. v. Everton* (*h*) a writ of prohibition was issued, on the ground that the appeal had not been brought to the "next practicable sessions," and, therefore, there was no jurisdiction to hear it. The practical distinction between *certiorari* and prohibition, is that *certiorari* is issued *after*, and prohibition may be issued *before*, the making of the order which is alleged to be in excess of jurisdiction. Where the hearing of an appeal on the merits is likely to take some time, and, on a question of jurisdiction being raised, the quarter sessions are prepared to hold that they have jurisdiction to hear the appeal, it may be convenient to try the question of jurisdiction by prohibition rather than by *certiorari*: to enable this course to be taken, the sessions may be asked to adjourn the hearing on the merits, and formally to fix a day on which they will proceed with it. Meanwhile, an application can be made for a writ of prohibition, and, if the King's Bench hold that the sessions have no jurisdiction, the costs of a protracted hearing on the merits will be saved. This course has been adopted at the London quarter sessions, and at the assessment sessions (*i*).

Many instances of cases dealt with by way of *mandamus* or *certiorari* have occurred where the objection was taken that the sessions had no jurisdiction to hear the appeal on the ground that it had not been brought to the next "practicable sessions" (*k*) or that the appellant had not made an objection before the assessment committee (*l*).

Decisions on the merits of an appeal.—Where the quarter sessions have jurisdiction to hear an appeal on the merits, "if that jurisdiction has once been exercised, however erroneous the decision, if the order of the quarter sessions be regular on the face of it, so that it appears therefrom that the order of quarter sessions is within its jurisdiction and competency, the absence of which

(*f*) See the Crown Office Rules, 1886, r. 33.

(*g*) The decisions and authorities cited in *R. v. Herford* (1860), 3 E. & E. 115, and in *R. v. Judge of Lincolnshire County Court* (1887), 20 Q. B. D. 167, seem to show this, and the instances referred to in the text, in which prohibition to sessions has issued, support it.

(*h*) (1871), L. R. 6 C. P. 414.

(*i*) *R. v. London JJ.*, [1893] 2 Q. B. 476; [1894] A. C. 600; Ryde's Rat. App. (1891—1893), 360; *R. v. General Assessment Sessions* (1886), 17 Q. B. D. 394; *S. C.*, *sub nom. Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886—1890), 86.

(*k*) *Vide supra*, p. 550.

(*l*) *Vide supra*, p. 553.

alone gives occasion to the interference of the superior court, the Court of Queen's Bench has from the earliest time declared itself incompetent to interfere, the simple reason being, as it has been again and again held, that it has no appellate jurisdiction over the court of quarter sessions in matters which are within the proper jurisdiction of the latter" (*m*). The procedure by special case (dealt with below), which is now in substance, though not originally in form an appeal strictly so called, is the only method of questioning a decision of the quarter sessions on the merits of an appeal. The practical effect is that while there is no appeal from the quarter sessions on questions of fact, there is an appeal (by way of special case) on questions of law, provided the quarter sessions do what is equivalent to giving leave to appeal, by granting a case. And where a case is stated by the sessions, if the court above come to the conclusion that it raises a question of fact, and not of law, the case will be sent back to the sessions (*n*).

Special case stated by quarter sessions.—By the terms of the commission of the peace, the justices at quarter sessions are empowered and required to obtain the opinion of a judge of the High Court, which is now done after hearing the appeal at quarter sessions, by giving judgment subject to the opinion of the King's Bench Division on a special case stated by the sessions. But the question whether a case is one of difficulty or not is to be determined by the sessions, and not by the parties (*o*). "Nothing can be better settled than that it is entirely at the discretion of the sessions whether to grant a case, and so to submit their judgment to the opinion of the Court of Queen's Bench, or not. Even though the appeal should be one in which in the proper exercise of their discretion they ought undoubtedly to grant a case in order that their judgment may be reviewed, if they refuse to do so, there are no means of compelling them" (*p*). But if the sessions grant a case, and afterwards refuse to state it, the High Court will, in some cases at least, grant a *mandamus* either to state a case or to enter continuances and hear the appeal (*q*); but such cases are

(*m*) *Per* COCKBURN, C.J., *R. v. Overseers of Walsall* (1878), 3 Q. B. D. 457, at p. 468; and see the judgment of Lord CAIRNS, L.C., in the same case on appeal; *Overseers of Walsall v. London and North Western Rail. Co.* (1878), 4 App. Cas. 30, at p. 39. See also *R. v. Leicestershire JJ.* (1813), 1 M. & S. 442; *R. v. Monmouthshire JJ.* (1825), 4 B. & C. 844; *R. v. Monmouthshire JJ.* (1828), 8 B. & C. 137: which are cited *supra*, p. 595.

(*n*) See *North and South Western Junction Rail. Co. v. Brentford Union* (1888), 13 App. Cas. 592; *supra*, pp. 225—227.

(*o*) See *R. v. Chantrell* (1875), L. R. 10 Q. B. 587, at pp. 588, 589, where the history of the practice was discussed: see also *R. v. Overseers of Walsall*, *infra*.

(*p*) *R. v. Overseers of Walsall* (1878), 3 Q. B. D. 457, at p. 473. The reversal of the decision in this case by the House of Lords leaves this part of the judgment untouched: see *Overseers of Walsall v. London and North Western Rail. Co.* (1878), 4 App. Cas. 30, at pp. 39, 40.

(*q*) *R. v. Pembrokehire JJ.* (1831), 2 B. & Ad. 391; *R. v. Effingham* (1781), 2 B. & Ad. 393 (*n*); *R. v. Suffolk JJ.* (1832), 1 Dowl. P. C. 163.

very rare, and (it is submitted) a *mandamus* to state a case would be granted only in very exceptional circumstances.

The case is usually asked for either in the course of the hearing or at the moment when judgment is given. Probably, as the justices can always alter their judgment at any time during the continuance of the sessions, but not afterwards (*r*), it would be held to be too late to ask for a case after the sessions had come to an end, but not too late to ask for a case if the sessions had been merely adjourned (*s*). If the applicant is in doubt whether to take up a case or not, the best course undoubtedly is to ask for a case when judgment is given; if on further consideration he desires to abandon the case, it is always open to him to do so.

It must be noticed that the practice is *not* governed by the Summary Jurisdiction Acts, or the rules made thereunder, which require the application for a case under those Acts to be made in writing.

The usual practice is for the party applying for the case to have it drawn by counsel, and to submit it to the other side; if the parties agree upon the form of the case, it is signed by the chairman of the sessions. If the parties cannot agree, it is settled and signed by him, and sometimes, before it is finally settled, the parties appear (either by counsel or solicitors) before the chairman sitting *in camera*.

The special case cannot be filed at the Crown Office after the expiration of six calendar months from the making of the order of quarter sessions, except by leave of the court on special circumstances being shown, either before or after the expiration of such six months (*t*). This appears to be the only limitation of the time within which the case must be stated. The case cannot be filed unless recognizances are entered into (*u*). The writ of *certiorari*, formerly required to bring up the special case, is no longer necessary (*x*).

Powers of King's Bench as to case stated by sessions.—

The powers of the King's Bench as to a special case stated by quarter sessions are now regulated by ss. 1 and 2 of the Supreme Court of Judicature (Procedure) Act, 1894 (*y*). By s. 2 of that Act, the appellate court may draw any inference of fact which might have been drawn in the quarter sessions, and may give any judgment or make any order which ought to have been made or given in that court, or may remit the order and the case stated on it, with the opinion or direction of the appellate court, for rehearing

(*r*) *Vide supra*, p. 594.

(*s*) *Vide supra*, pp. 569, 570, as to the distinction between adjourned and intermediate sessions.

(*t*) See Crown Office Rules, 1886, r. 34.

(*u*) *Ibid.*, rr. 36, 38.

(*x*) See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 40.

(*y*) 57 & 58 Vict. c. 16: set out in Appendix II.

and determination by the quarter sessions, or may remit the case for re-statement. The section provides how judgment may be entered at subsequent sessions, and enacts that entry and respite of an appeal to quarter sessions, in respect of which a case has been stated for the High Court, shall not be necessary. It seems that no part of this section applies to cases stated by order of a judge under Baines' Act (z), which are apparently excepted from the operation of the section by sub-s. (1).

The section above quoted gets rid of the doubt, which at one time existed, whether the sessions could state a case raising several questions of law, with corresponding alternative findings of fact, because it was at one time suggested that the King's Bench could do no more than either quash or affirm the decision of the sessions *simpliciter*. There is, however, another point which is perhaps not dealt with by the section. In *R. v. Sutton Coldfield* (a), it was held that a preliminary point, not finally disposing of the appeal, ought not in any form to be brought before the Queen's Bench on a case stated by the sessions. And in *R. v. Kesteven JJ.* (b), Lord DENMAN, C.J., said "the court of Queen's Bench will not decide merely for the purpose of putting the inferior court in motion." It is not clear whether s. 2 of the Supreme Court of Judicature (Procedure) Act, 1894, has altered the practice in this respect: the section enables the King's Bench to remit the case to the sessions "for rehearing and determination," but those words perhaps imply that the appeal must already have been heard.

Appeal to Court of Appeal.—By s. 2 (1) of the Supreme Court of Judicature (Procedure) Act, 1894, "every case stated by a court of quarter sessions otherwise than under the Acts 11 & 12 Vict. c. 78 (c), and 12 & 13 Vict. c. 45 (d), for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly"; and by s. 1 (5), "in all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court; . . . and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that court or by the Court of Appeal." This enactment adopts the decision in *Overseers of Walsall v. London and North Western Rail. Co.* (e), that an appeal lay to the Court of Appeal, and negatives the decision in *R. v. Savin* (f) that leave to appeal was not necessary.

It is submitted that, if leave be given to appeal to the Court of

(z) 12 & 13 Vict. c. 45: *vide infra*, p. 613.

(a) (1874), L. R. 9 Q. B. 153.

(b) (1844), 3 Q. B. 810, at p. 819. See also *R. v. Marton-cum-Grafton* (1847), 10 Q. B. 971.

(c) The Crown Cases Act, 1848.

(d) The Quarter Sessions Act, 1849, commonly called Baines' Act. As to cases stated under that Act, *vide infra*, pp. 613, 614.

(e) (1878), 4 App. Cas. 30.

(f) (1880), 6 Q. B. D. 309.

Appeal, an appeal lies from that court to the House of Lords, under s. 3 of the Appellate Jurisdiction Act, 1876 (*g*).

Costs in the King's Bench and Court of Appeal.—By s. 2 of the Supreme Court of Judicature (Procedure) Act, 1894 (*h*), on the hearing of a case stated by quarter sessions, not including a case stated under 12 & 13 Viet. c. 45 (*i*), “the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne.” The term “appellate court” seems to include both the Court of Appeal and the King's Bench Division, and in *Ellis v. Cumberwell Assessment Committee* (*k*), the Court of Appeal dealt with the costs at quarter sessions, no objection being taken to their jurisdiction to do so. This construction of the section (it is believed) has been generally adopted in practice.

This section was apparently passed to get rid of the decision in *London County Council v. West Ham* (*l*) that the Court of Appeal (and apparently the Queen's Bench Division) had no jurisdiction to give costs to an *appellant* who succeeded, there being no statute giving power to give costs. It seems clear that before the passing of the Act of 1894 neither the Court of Appeal nor the Queen's Bench had power to deal with the costs at quarter sessions.

Special case stated by order of a judge.—In addition to the procedure by way of special case stated by the quarter sessions (after the hearing of the appeal by that court), where there are no facts in dispute, a case may be stated (without any hearing by the quarter sessions) under s. 11 of the Quarter Sessions Act, 1849 (*m*), which provides that at any time after notice given of appeal against a rate, the parties may, by consent and by order of a judge, state the facts of the case in the form of a special case for the opinion of the King's Bench Division, and may agree that a judgment in conformity with the decision of that court, and for such costs as that court shall adjudge, may be entered at the sessions next, or next but one, after such decision shall have been given. It appears to be not necessary to enter and respite the appeal, from sessions to sessions, pending the decision of the High Court, for the concluding sentence of s. 11 provides that the judgment of the High Court, when entered at sessions, shall be of the same effect “as if given by the sessions upon an appeal duly entered and continued.”

(*g*) Cf. *Ford's Hotel Co. v. Bartlett*, [1896] A. C. 1, which was decided on sub-s. (1) of s. 1 of the Supreme Court of Judicature (Procedure) Act, 1894, and does not necessarily govern the present question.

(*h*) See sub-ss. (1) and (3), set out in Appendix II., *infra*.

(*i*) *Vide infra*.

(*k*) [1901] 1 Q. B. 68. The fact is not stated in the report, but appears in the writer's MS. notes.

(*l*) [1892] 2 Q. B. 173; Ryde's Rat. App. (1891--1893), 398; following *In re Mills' Estate* (1886), 34 Ch. D. 24; and *R. v. Parlbby*, W. N. (1889), 190.

(*m*) 12 & 13 Viet. c. 45: see Appendix II.

In one or two instances where the parties have agreed to state a case under this section, and it has been found on settling the case that some facts are in dispute, or that the parties cannot agree upon the form of the case, the case has (by consent) been stated by an arbitrator (*u*).

A case stated under s. 11 of the Quarter Sessions Act, 1849, must contain a statement that the parties have agreed that judgment may be entered at quarter sessions in conformity with the decision of the court (*o*). An appeal lies to the Court of Appeal from the decision of the King's Bench Division on a case stated under this section (*p*), and leave to appeal is not necessary (*q*); and the appeal lies even though judgment may have already been entered at quarter sessions in conformity with the decision of the King's Bench Division (*r*). The last case cited below left undecided the question how the judgment of the quarter sessions was to be set aside if the appeal proved successful.

A case stated under s. 11 of the Quarter Sessions Act, 1849 (12 & 13 Viet. c. 45), is expressly excepted from the cases to which s. 2 (1) of the Supreme Court of Judicature (Procedure) Act, 1894, applies (*s*). It may be suggested that the case still falls within s. 1 (5) of the same Act, which makes the decision of the King's Bench Division on an appeal "from any court or person" final unless leave to appeal be given. It is submitted that this is not so; for a case stated under s. 11 of the Quarter Sessions Act, 1849, "is not an appeal from the quarter sessions, because the quarter sessions have not given any judgment" (*t*); and the words "appeal from any court or person" in s. 1 (5) of the Act of 1894, must apparently be read as meaning an appeal from a judicial decision, and therefore cannot be said to apply on the ground that the appeal is an appeal against the making of the rate by overseers. It is also remarkable, that although *Lodge v. Huddersfield Corporation* (cited above) was decided after the passing of the Act of 1894, that Act was not cited when objection was taken to the right of appeal.

(*u*) See *Owens College v. Charlton-upon-Medlock*, Ryde's Rat. App. (1886—1890), 256; *Overseers of Lambeth v. London County Council*, [1897] A. C. 625; *Pearson v. Holborn Union*, [1893] 1 Q. B. 389; Ryde's Rat. App. (1891—1893), 152, 303. The last-mentioned case was stated under almost identical words in s. 40 of the Valuation (Metropolis) Act, 1869.

(*o*) *Corporation of Peterborough v. Overseers of Thurlby* (1882), 8 Q. B. D. 586.

(*p*) *Corporation of Peterborough v. Overseers of Wiltshorpe* (1883), 12 Q. B. D. 1.

(*q*) *Holborn Union v. Chertsey Union* (1885), 15 Q. B. D. 76.

(*r*) *Lodge v. Mayor, etc. of Huddersfield*, [1898] 1 Q. B. 859.

(*s*) The section is set out in Appendix II. But that section perhaps applies to cases stated under s. 40 of the Valuation (Metropolis) Act, 1869: *vide infra*, p. 694.

(*t*) *Holborn Union v. Chertsey Union* (1885), 15 Q. B. D. 76, at p. 79.

CHAPTER XXXI.

APPLICATION FOR A DISTRESS WARRANT.

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Preliminary.—It has been shown that, outside the “metropolis,” as defined by the Valuation (Metropolis) Act, 1869 (*a*), any person who wishes to dispute a rate on the ground that he is not in occupation of rateable property, or that he is specially exempt, or that the rate itself is a nullity, may appeal to quarter sessions; or may appeal on the ground of unfairness or incorrectness of valuation either to special sessions or to quarter sessions (*b*); and it will be seen that, inside the “metropolis,” every objection on the ground of unfairness or incorrectness of valuation must be raised by way of appeal against the valuation list (*not* against the rate) either to special sessions or the London quarter sessions (*c*); and that other objections on the ground of non-occupation or exemption may be taken either by way of appeal against the valuation list, or by way of appeal against the rate itself; while objections to the validity of the rate itself may be taken by way of appeal against the rate (*d*).

It is now proposed to consider on what grounds a ratepayer who has failed to appeal can successfully resist payment of a rate. The law on the subject appears to be absolutely the same either inside or outside the metropolis, and we need not, therefore, divide the consideration of it.

It must be noticed that, whenever the objection is discovered in time, it is generally, if not always, desirable to exercise the

(*a*) For the definition, *vide supra*, p. 513.

(*b*) *Vide supra*, p. 538.

(*c*) See ss. 19, 32, 45 of the Valuation (Metropolis) Act, 1869, in Appendix II.; *et vide infra*, pp. 666, 673.

(*d*) *Vide infra*, pp. 646, 647.

right of appeal even on those points on which the ratepayer has another means of disputing the rate. The opportunity of resisting the rate (when the overseers seek to enforce it) even on those points on which it is open to the ratepayer to do so, merely constitutes a mode of defence in addition to, and not in substitution for, the proceedings by way of appeal (*e*).

Application for a distress warrant.—If a rate, not appealed against, is not paid, it is recoverable by distress and imprisonment (*f*). The imprisonment is of a punitive character, and is not merely a means of enforcing payment; consequently the offender cannot, on becoming bankrupt, obtain an order of release under s. 10 (2) of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) (*g*). The first step is for the overseers to make a complaint before justices, and to take out a summons to show cause why the rate has not been paid (*h*). It has been said that in issuing a distress warrant the justices act ministerially and not judicially (*i*); but the authorities show that this proposition cannot be accepted as true without some qualification. In *Harper v. Carr* (*k*) it was expressly decided that justices in granting a distress warrant do not act ministerially; that they exercise a discretion after inquiring into the circumstances of the case; that the person charged must be heard in his defence, and must be summoned before a warrant of distress is granted (*l*). And it has further been decided that on the hearing of the summons, the justices may state a case for the opinion of the King's Bench Division (*m*), a proceeding which would be impossible if the functions of the justices were purely ministerial. And the justices can also inquire whether owners, or occupiers, are liable to be rated under the Poor Rate Assessment and Collection Act, 1869 (*n*).

It is clear that some objections can be raised on behalf of the ratepayer when the justices are asked to issue a distress warrant to enforce a rate. The question whether a particular objection can then be raised seems to depend upon the following distinction. The rate is to be made by the overseers, and allowed by the justices: does the objection taken amount to an allegation (1) that these functionaries have acted in excess of their jurisdiction,

(*e*) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868, at p. 879.

(*f*) See 43 Eliz. c. 2, s. 2, as amended by 12 & 13 Vict. c. 14, s. 2. A married woman (if liable to the rate) may be imprisoned; *In re Allen*, [1894] 2 Q. B. 924. See also the remarks on that case, *supra*, p. 65.

(*g*) *In re Edgeome*, [1902] 2 K. B. 403.

(*h*) See 12 & 13 Vict. c. 14, s. 5, and Schedule.

(*i*) *R. v. Handsley* (1881), 7 Q. B. D. 398; *R. v. Price* (1880), 5 Q. B. D. 300.

(*k*) (1797), 7 T. R. 270, at p. 275.

(*l*) As to this last point, see *R. v. Benn* (1795), 6 T. R. 198.

(*m*) *Fourth City Mutual Building Society v. East Ham*, [1892] 1 Q. B. 661; *R. v. Mayor of London* (1887), 57 L. T. 491.

(*n*) *R. v. Thornton* (1892), 8 T. L. R. 555; *Fourth City Mutual Building Society v. East Ham*, *supra*. See also p. 622, *infra*.

or (2) that they have acted erroneously in the exercise of their jurisdiction? If the objection belongs to the former class, it can be raised when application is made for the distress warrant: if it belongs to the latter class, it cannot (o).

The explanation of the apparent discrepancy between the dicta of different judges is probably this: where the facts necessary to create jurisdiction are proved or admitted, the duty of the justices is merely ministerial: statements made by judges, in dealing with cases where those facts were proved or admitted, to the effect that "the duty of the justices is merely ministerial," have been taken as laying down general propositions of law, whereas they should have been construed with reference only to the facts before the court in each case.

In *Ex parte May* (p), COCKBURN, (C.J., says that the justices have to see that there is such a rate as alleged, that the party summoned is named in the rate, and that he has not paid; "after which their duty is simply ministerial." But BLACKBURN, J., adds that the justices have to inquire whether the defendant is the occupier. But it is submitted that even this is not enough, for the defendant would have the right to show that the land for which he was rated was not in the parish for which the rate was made (q). The best course appears to be not to attempt to enumerate all the points which can be raised on the application for the distress warrant (r), but to say that if the rate is good on the face of it, and has been duly made, allowed, and published (s), and there is jurisdiction to make a rate on the person charged, the duty of the justices becomes ministerial.

From what has been said above, it seems clear that refusal to pay a rate, under the guise of "passive resistance," based on an objection to the policy of the Act under which the rate is made, raises a defence which is not admissible on the summons for a distress warrant. It must be noticed that the defence does not merely raise a point on which the justices are bound to decide against the defendant, but that it raises a point on which they are not permitted to hear him, and into which they cannot inquire. It may even be doubted, if magistrates heard the defence raised,

(o) *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868, at pp. 879, 880; *Mayor, etc. of Westminster v. Army and Navy Auxiliary Co-operative Supply*, [1902] 2 K. B. 125, at p. 134; *Ryde & Konstam's Rat. App.* (1894—1904), 288, at p. 293: *per* CHANNELL, J.: *Beeson v. Derby* (1903), *Ryde and Konstam's Rat. App.* (1894—1904), 328, at p. 333. See also *R. v. Gillespie* (1903), *Ryde & Konstam's Rat. App.* (1894—1904), 350, at p. 352: *per* Lord ALVERSTONE, C.J.

(p) (1862), 31 L. J. M. C. 161.

(q) *Governors of Bristol Poor v. Wait* (1834), 1 A. & E. 264, at p. 281, *infra*, p. 620.

(r) See *R. v. Gillespie* (1903), *Ryde & Konstam's Rat. App.* (1894—1904), 350, at p. 352.

(s) *Beeson v. Derby* (1903), *Ryde & Konstam's Rat. App.* (1894—1904), 328, at p. 333: *per* CHANNELL, J.

and decided in favour of the defendant, whether they would not be liable to pay the costs of a rule for a *mandamus* to issue the warrant (*t*).

The justices cannot delay the issue of a warrant on the ground of the poverty of the person charged (*u*).

The six months' limit imposed by s. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), does not apply to the issue of a summons for the recovery of a poor rate (*x*).

If the ratepayer, on the hearing of the summons, tenders in court the payment of part of the sum due, the justices are not bound to issue a distress warrant for more than the balance; whether they will issue a warrant for the whole of the rate, or for the balance, is a matter within their discretion with which the High Court will not interfere (*y*). The justices cannot, however, go into the question whether there has been a *previous* tender of the whole or any part of the amount due (*z*).

By the Justices Protection Act, 1848 (11 & 12 Vict. c. 44), s. 4, where a rate is made, allowed, and published, no action can be brought against the justices issuing the distress warrant, by reason of any irregularity or defect in the rate, or by reason of the person rated therein not being liable to be rated (*zz*).

The rate may be shown to be a nullity.—In an old case it was said that “a defect in the rate (unappealed from) could not avoid the warrant of distress,” and that if a rate is bad, the party should appeal (*a*); but this must apparently be read as applying to the inequality of the rate (*b*), for there are many reported cases in which actions of replevin or trespass have been held maintainable, in respect of a distress for rates, unappealed from (*c*). Thus, in *R. v. Newcomb* (*d*), it was held that a rate, not published until the third Sunday after it was made, was a nullity, and that the magistrates ought not to issue a distress warrant, for this was a radical defect in the rate which nothing could cure; and this decision was emphasised by the fact that there had previously been an unsuccessful appeal to quarter sessions on another point. The decision has been recently affirmed (*e*).

(*t*) *Cf. R. v. Boteler* (1864), 33 L. J. M. C. 101.

(*u*) *R. v. Handsley* (1881), 7 Q. B. D. 398.

(*x*) *Sweetman v. Guest* (1868), L. R. 3 Q. B. 262; *R. v. Price* (1880), 5 Q. B. D. 300.

(*y*) *R. v. Gillespie* (1903), Ryde & Konstam's Rat. App. (1894—1904), 350; 68 J. P. 11; *Ex parte Wiles* (1903), Ryde & Konstam's Rat. App. (1894—1904), p. 356.

(*z*) *R. v. Gillespie, supra*.

(*zz*) See also note (*q*), *infra*, p. 623.

(*a*) *Hutchins v. Chambers* (1758), 1 Burr. 579.

(*b*) See *R. v. Newcomb* (1791), 4 T. R. 368.

(*c*) See the cases collected in *Mersey Docks v. Cameron* (1861), 30 L. J. M. C. 194.

(*d*) (1791), 4 T. R. 368. See also *Sibbald v. Roderick* (1839), 11 A. & E. 38.

(*e*) *Benson v. Derby* (1903), Ryde & Konstam's Rat. App. (1894—1904), 328. Note the last words of s. 1 of the Poor Rate Act, 1743 (17 Geo. 2, c. 3), in Appendix II., and *cf. Le Feuvre v. Miller* (1857), 8 E. & B. 321.

By s. 18 of the Poor Rate Assessment and Collection Act, 1869 (*f*), "the production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *prima facie* evidence of the due making and publication of such rate." It must be noticed that this section merely throws the burden of proof upon the ratepayer, and if he can prove that the rate has not been duly made and published, he is at liberty to do so.

A rate which does not show for what purpose it is made, is wholly void, and the magistrates ought not to issue a warrant to enforce it; but a rate which does not specify sufficiently clearly the property for which persons are rated can (apparently) only be upset by an appeal to the sessions (*g*).

In order to defeat the issue of a distress warrant, the defect in the rate itself (apart from non-publication) must be something appearing on the face of it (*h*): thus, it is no answer to the application for a warrant to show that the rate is made for too long a period in advance (*i*), or that it is a retrospective rate (*k*), which (as a general rule) is a fatal objection on an appeal to quarter sessions (*l*), although possibly the King's Bench would in their discretion refuse to issue a *mandamus* to enforce a rate, which would work manifest injustice, as where the defendant had already overpaid money in respect of a previous rate which had been reduced on appeal (*m*). So, too, in *London and North Western Rail. Co. v. Bedford* (*n*), where there had been a reference to arbitration, and the appellants (having obtained a reduction) became entitled to a return of money already paid, but the rating authority proceeded to enforce subsequent rates in full, the court held that the proceedings were in violation of good faith, and in effect refused to allow the rates to be enforced.

Demand of rate.—It seems to be generally assumed that the overseers, when applying for a distress warrant, must prove that the rate has been demanded. The demand is generally made by delivering a printed demand-note (*o*). The note need not be

(*f*) 32 & 33 Vict. c. 41: see Appendix II.

(*g*) *R. v. Eastern Counties Rail. Co.* (1856), 5 E. & B. 974. See also *Manchester Overseers v. Headlam*, cited *infra*, p. 621.

(*h*) *Cf. Bates v. Plumstead* (1895), 64 L. J. M. C. 127; 72 L. T. 393; 59 J. P. 118; *Sandgate Local Board v. Pledge* (1885), 14 Q. B. D. 730.

(*i*) *Durrant v. Boys* (1796), 6 T. R. 580.

(*k*) *R. v. Kingston JJ. and Philips* (1858), E. B. & E. 256; 27 L. J. M. C. 199.

(*l*) *Waddington v. City of London Union* (1858), E. B. & E. 370. But see also *Harrison v. Stickney* (1848), 2 H. L. Cas. 108; *R. v. Leigh Rural District Council*, [1898] 1 Q. B. 36. It is submitted that the rule does not apply to rates which must necessarily be made retrospectively; *e.g.*, where a rate is made to pay costs ordered by quarter sessions to be paid to a successful appellant.

(*m*) *R. v. Parker* (1857), 7 E. & B. 155; distinguished in *R. v. Kingston JJ. and Philips*, *supra*; and see also *R. v. Kingston JJ. and Wedd* (1858), E. B. & E. 259.

(*n*) (1852), 17 Q. B. 978. *Cf. Southampton Gas Co. v. Southampton Guardians* (1877), 2 Q. B. D. 371, at p. 375 n.; cited *supra*, p. 602.

(*o*) See the General Order of the Local Government Board (June 14th, 1875).

delivered by the overseer (or assistant overseer) in person, and delivery by any person duly authorised is sufficient (*p*). Special provision is made for the service of the demand-note on non-residents, and on corporations and companies (*q*). The overseers must demand no more than the precise sum due (*r*). If, however, the sum demanded is the sum stated by the rate to be due, but is excessive by reason of erroneous arithmetic in the rate, the only remedy is by appeal (*s*). Where the overseers have served a demand in writing of the whole rate on the occupier of a hereditament let to him for a term not exceeding three months, and he claims the right to pay the rate by instalments (*t*), a distress warrant may be issued for the second instalment, without a second demand in writing (*u*).

If by mistake less than is due is demanded and paid, there can be a fresh demand and summons for the remainder, even though the overseers who made the rate have long gone out of office (*v*).

Non-occupation may be shown, but not want of beneficial occupation.—It has always been held that a ratepayer may show that, on the face of the rate, he is rated for property of which he is not the occupier (*y*). The statute, 43 Eliz. c. 2, authorises the overseers to make a rate on the occupiers of land: and therefore a rate made on a person for land which he does not occupy is “a rate which the overseers had no power to make, nor the magistrates to enforce. It is like a rate on land situate in a different parish, which, according to *HOLT, C.J.*, in *Groenvelt v. Burwell* (*z*), is an illegal tax, which the justices have no power to confirm” (*a*). And it makes no difference if the ratepayer has already appealed to quarter sessions on the ground that he is rated for what he does not occupy, and the quarter sessions have confirmed the rate: for in such a case “all that related to the assessment of lands not in occupation of” the person rated “was *coram non jndice*: the justices [at quarter sessions] therein exceeded their jurisdiction, and their determination is a nullity” (*b*). And the person rated may also show that he was not in occupation

(*p*) *Yewdall v. Craven* (1864), 29 J. P. 197.

(*q*) See the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), ss. 39, 40, in Appendix II.

(*r*) *Vide supra*, p. 56.

(*s*) *Bavin v. Hutchinson* (1862), 31 L. J. M. C. 229.

(*t*) Under the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), s. 2: see Appendix II.

(*u*) *Overseers of Walton-on-the-Hill v. Jones*, [1893] 2 Q. B. 175.

(*v*) *R. v. Blenkinsop*, [1892] 1 Q. B. 43.

(*y*) *Milward v. Cuffin* (1780), 2 Wm. Bl. 1330; *Governors of Bristol Poor v. Wait* (1834), 1 A. & E. 264; *Overseers of Manchester v. Meadlam* (1888), 21 Q. B. D. 96.

(*z*) (1698), 1 Ld. Raym. 471.

(*a*) *Governors of Bristol Poor v. Wait* (1834), 1 A. & E. 264, at p. 281.

(*b*) *Milward v. Cuffin* (1780), 2 Wm. Bl. 1330. But see also *Churchwardens of Birmingham v. Shaw* (1849), 10 Q. B. 868, at p. 880.

for the whole of the period for which the rate was made (*c*), in which case he would be liable only for a proportionate part of the rate.

An important distinction must be noted where the rate is made on property, of which part is occupied, and part is not occupied by the person rated. If one entire assessment be made in terms upon both the parts, so that, upon the true state of facts being ascertained, it is impossible to satisfy the description in the rate-book without including property which the person rated does not occupy, the rate will be bad, and the justices ought not to enforce it (*d*). But this rule does not apply where the person rated is actually in occupation of property which fulfils the description in the rate-book (*e*); for in such a case the person rated has to admit that he is rightly rated at something, while he contends that he is wrongly rated at too much; so that the question resolves itself into one of amount, for which the only remedy is by appeal (*f*), and, if occupation be admitted, the absence of beneficial occupation is a defence which can only be raised on appeal (*g*).

So, too, at a time when inhabitants as such were liable to be rated for stock-in-trade and other personal property (*h*), when a person who was rated admitted that he was an inhabitant, but denied that he had any stock-in-trade, it was held that if he was an inhabitant he was liable to be placed on the rate, though his rateable property might afterwards turn out to be nothing; but that the question of amount could only be raised on appeal to the sessions (*i*).

One of several joint occupiers is liable for the whole rate charged on the hereditament jointly occupied (*a*). But where a house (which is rated as one indivisible hereditament) is let in parts to several tenants, each of whom is in occupation only of the part let to him, no one of those tenants is liable for the rate on the whole hereditament (*b*); and it is in effect impossible to recover the rate at all.

Occupation by servant or caretaker.—It must be remembered that, in connection with rating, the word “occupation” in its

(*c*) *R. v. Tempest* (1898), 14 T. L. R. 199; *Davis v. Woodfield* (1900), 64 J. P. 215; 81 L. T. 782; *supra*, p. 55; and see pp. 55, 56, as to the calculation of the proportion.

(*d*) *Overseers of Manchester v. Headlam* (1888), 21 Q. B. D. 96; following *London and North Western Rail. Co. v. Buckmaster* (1875), L. R. 10 Q. B. 70, 444.

(*e*) *Overseers of Manchester v. Headlam*, *supra*; *Crease v. Sawle* (1842), 2 Q. B. 862.

(*f*) *Crease v. Sawle* (1842), 2 Q. B. 862, at p. 879; *cf. Rayner v. Drutt* (1900), 64 J. P. 567; 82 L. T. 718; decided on the Public Health Act, 1875, s. 256.

(*g*) See p. 622.

(*h*) *Vide supra*, pp. 3, 4.

(*i*) *Marshall v. Pitman* (1833), 9 Bing. 595.

(*a*) *R. v. Paynter* (1845), 7 Q. B. 255.

(*b*) *R. v. London J.J.*, [1899] 1 Q. B. 532; see also *Allchurch v. Hendon Union*, [1891] 2 Q. B. 436; *supra*, p. 31.

legal sense means something different from residence; for a servant or lodger may reside in a house without being the occupier (*c*). Thus where a man lived in a house for which he was rated, it was held that on the application for a distress warrant, it was open to him to show that he resided there merely as servant or caretaker for the owner (*d*). But where executors left a servant of their testator in charge of the testator's house, and did not appeal against the rate in which *they* were rated as occupiers, it was held that on the application for a distress warrant they could not raise the objection that they had no beneficial occupation (*e*). In this case, it must be noticed that occupation by the executors was admitted. In *R. v. Bayshawe* (*f*), on the application for a distress warrant, the person rated tendered evidence to show that the property for which he was rated was let to his wife, and that she was in occupation. It was held that the justices did right in accepting the evidence, and inquiring into the question of occupation.

Similarly in *R. v. Sinclair* (*g*), an exhibition was closed during half a year, during which time it was used only for storing chattels, and it was held that on the application to enforce a rate made while it was closed, it was open to the justices to inquire whether there was any occupation, but not whether the occupation was beneficial; and that the closing of the exhibition during part of the year might be ground for altering the amount of the assessment, which was a matter of appeal.

Rating of owner instead of occupier.—On the hearing of an application for a distress warrant, the magistrates have jurisdiction to inquire whether owners or occupiers are liable to be rated, having regard to the Poor Rate Assessment and Collection Act, 1869 (*h*). In both the cases cited in the note the owners were summoned. Possibly different considerations apply where the occupier is summoned, as under s. 12 of the Poor Rate Assessment and Collection Act, 1869 (*i*), the rate may be recovered from the occupier in any event, subject to the restrictions imposed by that section.

Effect of statutory exemption.—In *Churchwardens of Birmingham v. Shaw* (*k*), a literary society, who had not appealed against the rate, resisted the application for a distress warrant on

(*c*) *Vide supra*, pp. 21, 26.

(*d*) *R. v. Simmons* (1893), Ryde's Rat. App. (1891—1893), 316; *S. C. sub nom. R. v. London J.J.*, W. N. (1893) 86; *cf. Solomon v. St. Mary, Islington* (1900), Times Newspaper, Feb. 16th.

(*e*) *R. v. Bradshaw* (1860), 29 L. J. M. C. 176; 2 El. & El. 836; *cf. Mersey Docks v. Cameron* (1861), 30 L. J. M. C. 194.

(*f*) (1897), 75 L. T. 513. See also p. 25, *supra*, as to occupation by husband or wife.

(*g*) (1896), 60 J. P. 551; 12 T. L. R. 466.

(*h*) *R. v. Thornton* (1892), 8 T. L. R. 555; *Fourth City Mutual Building Society v. East Ham*, [1892] 1 Q. B. 661.

(*i*) 32 & 33 Vict. c. 41; see Appendix II.

(*k*) (1849), 10 Q. B. 868; *cf. R. v. Hannam* (1886), 34 W. R. 355; *Rayner v. Drutt* (1900), 64 J. P. 567; 82 L. T. 718.

the ground that they were exempt under the Scientific Societies Act, 1843 (*l*), but it was held that the question of exemption could be raised only on appeal against the rate. Lord DENMAN, C.J., said (*m*) : “As soon as the land is shown to be in the parish, and A. B. to be the occupier, the case is *primâ facie* brought within the Statute of Elizabeth, the rate on the face of it is good, and jurisdiction attaches ; whether that *primâ facie* case can be answered by any circumstances affecting the character of the occupation is matter to be determined by the Court of Appeal on appeal made. In the present case the party rated had many facts to prove, and a construction of the statute to make out, before he could establish his exemption.” It may be convenient to note the distinction between a rate made on land exempt under the statute here referred to, and a rate made on land not within the parish (*n*). In the one case the rate is made on land which is for the time being exempt, but which would be rateable in the hands of other occupiers, or in the hands of the present occupiers if they failed to comply with the statutory conditions ; in the other case the land could under no circumstance be liable to the rate in question.

Appeal against distress warrant.—An appeal lies to quarter sessions against the issue of a distress warrant (*o*), but it has been held that an appeal will not lie against a distress before the distress has been levied (*p*). In the case referred to, the persons rated for the whole of a house alleged that they were in occupation of only part of it, but the justices refused to go into the question of occupation and issued the warrant. It was pointed out by the Queen’s Bench Division that if the facts alleged were true there was no jurisdiction whatever to issue the warrant, and all concerned in the levy (except perhaps the subordinate officers) would be liable to an action if they acted upon it (*q*). But it seems that the ratepayer might have applied for a *mandamus* to the justices to hear and determine the summons, as was done in *R. v. Simmons* (*r*).

In *R. v. Kent J.J.* (*s*), it was held that on appeal against a distress warrant, the appellant cannot avail himself of objections which he might have urged against the rate itself, on an appeal against the rate. It is submitted that this decision must be understood as meaning that on appeal against a distress warrant, the appellant cannot rely on *every* objection which he might have taken on appeal against the rate.

(*l*) 6 & 7 Vict. c. 36, *supra*, p. 103.

(*m*) 10 Q. B., at p. 881.

(*n*) *Vide supra*, p. 620.

(*o*) See 43 Eliz. c. 2, s. 5 ; 17 Geo. 2, c. 38, s. 7 ; in Appendix II.

(*p*) *R. v. London J.J.*, [1899] 1 Q. B. 532.

(*q*) As to the justices issuing the warrant, see the Justices Protection Act, 1848 ; cited *supra*, p. 618. As to the subordinate officers, see the Constables Protection Act, 1750 (24 Geo. 2, c. 44), ss. 6, 8 ; and the Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 8, in Appendix II.

(*r*) Ryde’s Rat. App. (1891—1893), 316 ; 62 L. J. M. C. 106 ; *supra*, p. 622.

(*s*) (1867), 16 L. T. 672.

Statement of a case for the King's Bench Division.—On the hearing of an application for a distress warrant the justices may state a case for the King's Bench Division under the Summary Jurisdiction Acts (*t*). Inasmuch as the proceedings before the justices may end in imprisonment of the defendant, the judgment on the special case is a judgment on a "criminal cause or matter" within s. 47 of the Judicature Act, 1873, and no appeal will lie to the Court of Appeal (*u*). This does not apply to a case stated on an application to recover a general district rate under s. 256 of the Public Health Act, 1875 (*x*).

The case must be applied for in writing within seven days, and notice must be given to each justice who heard the summons, and a copy left with the clerk of the court, and recognizances must be entered into (*y*). "The statutory requirements are conditions precedent to the right of appeal, and cannot be waived by the parties or the justices" (*z*). The appellant, within three days after receiving the case, must transmit it to the Crown Office (*a*), first giving notice of the appeal (with a copy of the case) to the other party (*b*). Service of the case on the respondent's solicitor is not ordinarily sufficient (*c*), though it may be sufficient in exceptional circumstances, *e.g.*, where the respondent cannot be found (*d*), or is on board ship at sea (*e*). The case should be stated within three months (*f*); but, where the appellant is not in default, failure on the part of the magistrates to state the case within the time limited is not fatal (*g*).

(*t*) *Fourth City Mutual Building Society v. East Ham*, [1892] 1 Q. B. 661; *R. v. Mayor of London* (1887), 57 L. T. 491; see also *R. v. Simmons*, Ryde's Rat. App. (1891—1893), 316: *per* BRUCE, J.; *Solomon v. St. Mary, Islington* (1900), Times Newspaper, Feb. 16th. In *R. v. Tempest* (1898), 14 T. L. R. 199, it was suggested that the decision of the House of Lords in *Boulter v. Kent JJ.*, [1897] A. C. 556, had in effect overruled the principle on which *R. v. Mayor of London*, *supra*, was based; but no decision on the point was given.

(*u*) *Seaman v. Burley*, [1896] 2 Q. B. 344. *Cf. In re Edgecome*, [1902] 2 K. B. 403, in which it was held that the imprisonment is of a punitive character, and that the defendant could not obtain an order for release under s. 10 (2) of the Bankruptcy Act, 1883, on the making of a receiving order.

(*x*) *Southwark and Vauxhall Water Co. v. Hampton Urban District Council*, [1899] 1 Q. B. 273.

(*y*) See the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), s. 3; the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33; and the Summary Jurisdiction Rules, 1886, r. 18. See also *South Staffordshire Waterworks Co. v. Stone* (1887), 19 Q. B. D. 168; *Lockhart v. Mayor, etc. of St. Albans* (1888), 21 Q. B. D. 188; *Westmore v. Paine*, [1891] 1 Q. B. 482; *R. v. Knill* (1893), 57 J. P. 277.

(*z*) *Per* POLLOCK, B., *Westmore v. Paine*, *supra*.

(*a*) The case must be actually lodged in three days: *Aspinall v. Sutton*, [1894] 2 Q. B. 349.

(*b*) See the Summary Jurisdiction Act, 1857, s. 2; *Edwards v. Roberts*, [1891] 1 Q. B. 302; *Ashdown v. Curtis* (1862), 31 L. J. M. C. 216.

(*c*) *Hill v. Wright* (1896), 60 J. P. 312.

(*d*) *Syred v. Carruthers* (1858), E. B. & E. 469.

(*e*) *Anderson v. Reid* (1902), 66 J. P. 564.

(*f*) Summary Jurisdiction Rules, 1886, r. 18.

(*g*) *Hughes v. Wavertree Local Board* (1894), 58 J. P. 654.

(2) THE PROCEDURE WITHIN THE METROPOLIS.

CHAPTER XXXII.

THE MAKING AND REVISION OF VALUATION LISTS.

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The Valuation (Metropolis) Act, 1869.—This Act (*a*) deals with practice only. It imposes no new rates, and creates no new liability to existing rates. It is true that it substitutes new definitions of gross and rateable value (by which the quantum of liability is measured) for the earlier definitions of gross estimated rental, and net annual value respectively; but, as we have seen (*b*),

(*a*) 32 & 33 Vict. c. 67: set out in Appendix II.

(*b*) *Vide supra*, pp. 152, 158: and p. 160, note (*a*).

the new definitions are almost verbally identical with those for which they are substituted, and seem intended rather to explain than to alter the measure of value.

The Valuation (Metropolis) Act, 1869, extends only to the "metropolis" as defined by ss. 3, 4 : the meaning of the definition has been already considered (*c*). The Act incorporates the Union Assessment Acts, 1862 and 1864, "so far as is consistent with the tenor" of the Act of 1869 : but (by s. 77 of the latter Act) several sections of the earlier Acts are repealed, so far as they relate to the metropolis. The Acts referred to are set out in Appendix II., the repealed sections of the earlier Acts being enclosed within brackets.

The principal changes in procedure introduced by the Valuation (Metropolis) Act, 1869, have been already referred to (*d*).

Valuation lists of three kinds.—The Valuation (Metropolis) Act, 1869, provides in ss. 46 and 47 for the making of valuation lists of three kinds :

- (1) A new valuation list is to be made in every fifth year, *i.e.*, in the years 1870, 1875, 1880, 1885, and so on. (For convenience this list is commonly called a quinquennial list, though that term is not used in the Act.)
- (2) A supplemental list (*e*) is to be made (if necessary) in each of the first four years following the making of a quinquennial list, and "shall show all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations."
- (3) A provisional list (*f*) is to be made "if in the course of any year the value of any hereditament is increased by the addition thereto or the erection thereon of any building, or is from any cause increased or reduced in value."

The operation, therefore, of a quinquennial list cannot exceed five years ; while a supplemental list cannot last longer than the making of the next quinquennial list, and a provisional list lasts for part of a year (*g*). And, in each case, the operation of the list as to particular hereditaments may be curtailed by changes in the hereditament involving an entry in a supplemental or provisional list.

(*c*) *Vide supra*, p. 513.

(*d*) *Vide supra*, pp. 512, 513.

(*e*) As to when a supplemental list is necessary, and the principles on which it is to be made, *vide infra*, pp. 648—655.

(*f*) As to when a provisional list is necessary, *vide infra*, p. 648.

(*g*) As to provisional lists, this statement may require some qualification : *vide infra*, p. 658.

A quinquennial list passes through three stages before it becomes operative :

- (1) It is made by the overseers for the parish (*h*).
- (2) It is revised by the assessment committee of the union containing the parish (*i*).
- (3) Appeals may be brought from the decision of the assessment committee either (A) direct to the London quarter sessions, or (B), in certain cases only, to special sessions and thence to the London quarter sessions (*k*).

(The first two stages correspond closely to the practice outside the metropolis, but the third is peculiar to the metropolis.)

A supplemental list, so far as relates to the hereditaments which it contains (or ought to contain), is made and revised in the same way, and is subject to the same right of appeal, as a quinquennial list. The procedure relating to quinquennial lists is, therefore, repeated every year in making supplemental lists, so far as relates to the hereditaments included in the supplemental lists (*l*).

But a provisional list differs both from a quinquennial and from a supplemental list in the procedure and the time for making it and in its effect (*m*). It must specially be noticed that there is no right of appeal to any court against a provisional list (*n*).

The proceedings described in this chapter do not apply to provisional lists (*o*), but they do apply to quinquennial lists, and also to supplemental lists (so far as relates to hereditaments which are, or which ought to be, contained therein).

Overseers.—By s. 4 of the Valuation (Metropolis) Act, 1869, the term “overseers” in that Act includes any person or body of persons performing the duties of overseers so far as regards the assessment, making, and collection of rates for the relief of the poor. The procedure in many of the parishes in the metropolis has in the past been affected by local Acts. But the London Government Act, 1899 (*p*) by s. 15 and s. 16 (1) authorises the making of schemes which may (*inter alia*) repeal or modify any local Act, other than the London Building Act, 1894. In this volume it is not proposed to deal with the effect of the local Acts, or the schemes (if any) by which they may have been modified. The London Government Act, 1899, also provides by s. 23 (3) that the churchwardens of every parish within a metropolitan borough shall cease to be overseers ; and by s. 11 (*q*) the council of each borough shall

(*h*) *Vide infra*, pp. 630—634.

(*i*) *Vide infra*, pp. 635—640.

(*k*) *Vide infra*, pp. 665, 669, 673.

(*l*) See the Valuation (Metropolis) Act, 1869, s. 46 (3), in Appendix II.

(*m*) As to the procedure, see p. 654 ; as to the effect, see p. 659.

(*n*) *Fulham Assessment Committee v. Wells* (1888), 20 Q. B. D. 749 ; *infra*, p. 656.

(*o*) As to provisional lists, *vide infra*, pp. 655—663.

(*p*) 62 & 63 Vict. c. 14 : see Appendix II.

(*q*) See Appendix II.

be the overseers of every parish within their borough. In this work it has been thought desirable to use the term "overseers" throughout, although, so far as relates to a parish in a metropolitan borough, it must be understood as referring to the council of the borough acting as overseers.

Assessment committee.—Before the passing of the London Government Act, 1899, the assessment committee in the metropolis was appointed either by the guardians, or by the vestry (*v*) ; or in some places not included in any union, and in which there was no board of guardians, the assessment committee of an adjoining union was directed to act (*s*). And by s. 5 of the Valuation (Metropolis) Act, 1869, where the assessment committee was appointed by the vestry, the provisions of that Act and the Acts incorporated therewith (which include the Union Assessment Acts) were to be construed as if vestry and vestry clerk, etc., were substituted for board of guardians, clerk of the board of guardians, etc.

The London Government Act, 1899 (*t*), by s. 4, transfers the powers of the vestry to the borough council, who are made the successors of the vestry ; and by s. 13, where the whole of a union is within one borough, the assessment committee shall be appointed by the borough council instead of by the board of guardians, and where the borough comprises the whole of two or more unions, the council shall appoint only one assessment committee for those unions. By s. 31 (2) enactments in any Act referring to an authority whose powers and duties are transferred to a borough council, "shall be construed with the necessary modifications, including the substitution of the borough council for that authority."

It is probably intended that the borough council shall appoint the assessment committee out of their own body, as the guardians (or the vestry) had previously done ; at all events, it seems clear that where the borough council appoint one committee for several unions the committee are not to be selected from the guardians.

Where the borough council take the place of a vestry, whose "successors" they are made (*u*), there seems to be no difficulty ; but where the assessment committee is to be appointed by the borough council instead of by the guardians (*v*), there being no express enactment that the council shall be the "successors" of the guardians, it is perhaps doubtful whether the general provisions of s. 31 (2) (cited above) have the effect of substituting the borough

(*v*) U. A. C. Act, 1862, s. 2, and Valuation (Metropolis) Act, 1869, s. 5.

(*s*) Valuation (Metropolis) Act, 1869, s. 59.

(*t*) See Appendix II.

(*u*) See London Government Act, 1899, s. 4 (1).

(*v*) See s. 13.

council for the guardians in connection with one or two matters which will be noticed hereafter (*y*).

Ratepayer, occupier, and owner.—By s. 4 of the Valuation (Metropolis) Act, 1869 (*z*), the term “ratepayer” means “every person who is liable to any rate or tax in respect of property entered in any valuation list.” This definition includes a person liable to pay rates, but not in fact rated. And by s. 2 of the Valuation (Metropolis) Amendment Act, 1884 (*a*), “where the owner or lessee of any hereditament is liable to be assessed for any rate or tax in the place of the occupier or tenant, or does in fact pay any such rate or tax in his place under any contract or arrangement with him, such owner or lessee shall for the purposes of this Act and the Acts incorporated therewith be deemed to be the occupier of such hereditament, and the person referred to as the ratepayer in ss. 19 and 32 of” the Valuation (Metropolis) Act, 1869. And by s. 13 of the Poor Rate Assessment and Collection Act, 1869 (*b*), “every owner of any hereditament for the rates of which he has become liable [*i.e.*, under s. 3 or s. 4 of that Act] shall have the same right of appeal (*c*) (subject to the same conditions and consequences) against the valuation lists and the poor rates as if he were the occupier thereof”; and by s. 20 of the same Act the word “owner” is specially defined.

Times for proceedings.—For the various proceedings in making and revising a valuation list, times are prescribed by s. 42 of the Valuation (Metropolis) Act, 1869; but it was held in *R. v. Inghall* (*d*) that the provisions of that section are directory and not imperative, and therefore that failure to make and revise the valuation list within the prescribed times does not make it a nullity. This decision was confirmed (with some qualifications) by the Court of Appeal in *R. v. London J.J.* (*e*), in which it was held that the provisions of s. 42 as to the time for hearing appeals are in a sense imperative so as to bind the will of the sessions, but that if an appeal is entered in due time, but (owing to pressure

(*y*) *Vide infra*, pp. 683, 692.

(*z*) Set out in Appendix II.

(*a*) 47 & 48 Viet. c. 5; set out in Appendix II. The section was apparently passed to meet the decision of the assessment sessions (in *Mutual Tontine Westminster Chambers Association v. St. Margaret and St. John, Westminster* (1881), Ryde's Met. Rat. App., 247), that owners who did not compound for the rates under 32 & 33 Viet. c. 41, were not entitled to appeal.

(*b*) 32 & 33 Viet. c. 41: see Appendix II.

(*c*) This seems to involve the right to object to the valuation list before the assessment committee as a preliminary step towards appealing.

(*d*) (1876), 2 Q. B. D. 199; Ryde's Met. Rat. App. 176. There is some difficulty in reconciling this decision with *Reigate Union v. South Eastern Rail. Co.*, [1894] 1 Q. B. 411: *vide supra*, p. 531.

(*e*) [1893] 2 Q. B. 476; Ryde's Met. Rat. App. (1891—1893), 260. Note that the decision of the Court of Appeal, on the question of time, was unaffected by the decision of the House of Lords, which was based upon another ground: see [1894] A. C. 609, *sub nom. London County Council v. St. George's Union*.

of business) cannot be heard in the time prescribed, the sessions have jurisdiction (and are bound) to hear the appeal after the expiry of the statutory time. BOWEN, L.J., held (*f*) that there is no such division of acts into directory and imperative acts as to be a categorical division which exhausts all cases. It may perhaps be inferred that one and the same enactment may be regarded as both imperative and directory in relation to the different persons affected by it: that is to say, imperative with regard to the persons on whom it confers rights, and directory with regard to persons on whom it imposes duties. So that a person having a right to object to, or appeal against, a list must exercise that right within the prescribed times or not at all; while a person who has a duty to perform (if by accident or mistake he fails to perform it in the prescribed time), may and ought to perform it later (*g*).

In *R. v. Ingall* (*h*) the appellant, by reason of the delay, was deprived of the opportunity of appealing to special sessions, and it was suggested by LUSH, J., that had he been wholly deprived of his right of appeal, he had probably a remedy by action against those who had failed to perform a public duty.

In dealing with the provisions as to time contained in the Valuation (Metropolis) Act, 1869, it must be noticed that by s. 4 the term "year" in that Act means the twelve months commencing with April 6th.

Making and deposit of valuation list.—In every fifth year (that is, in the years 1870, 1875, 1880, 1885, and so on) the overseers of every parish in the metropolis must make and deposit the valuation list in duplicate before June 1st (*i*). One duplicate must be sent by the overseers to the surveyor of taxes of the district, who may alter the gross value of any hereditament, and must transmit his duplicate to the assessment committee within twenty-eight days after he has received it (*k*). The overseers must deposit the other copy in the place in the parish in which rate books are deposited and kept (*l*). The valuation list must be in the form given in Schedule II. to the Valuation (Metropolis) Act, 1869, as modified by the Agricultural Rates Act, 1896, and

(*f*) See Ryde's Rat. App. (1891—1893), at p. 379; [1893] 2 Q. B., at p. 491.

(*g*) Cf. *Hughes v. Wavertree Local Board* (1894), 58 J. P. 654, where it was held that the limitation of time in r. 18 of the Summary Jurisdiction Rules, 1886, for applying for a case was absolutely binding on the applicant, while the limitation of time for the statement of the case by the magistrate was directory merely.

(*h*) (1876), 2 Q. B. D. 199.

(*i*) See the Valuation (Metropolis) Act, 1869, s. 6, s. 42 (1), and s. 46 in Appendix II.

(*k*) *Ibid.*, s. 8. It seems that there is no provision for special notice of an alteration by the surveyor of taxes to the occupier affected by it.

(*l*) See Valuation (Metropolis) Act, 1869, s. 7; U. A. C. Act, 1862, s. 17, in Appendix II. As to the custody of the rate books, see 17 Geo. 2. c. 38, s. 13; 58 Geo. 3, c. 69, s. 6; 7 & 8 Vict. c. 101, s. 33.

the rules made thereunder (*m*) ; and it must contain every "hereditament" (*n*) in the parish, subject to the exceptions mentioned in s. 51 of the Valuation (Metropolis) Act, 1869. Every hereditament must be entered in the list in accordance with the classes mentioned in Schedule III. of that Act, so that the deductions to be made from the gross value in ascertaining the rateable value may be calculated in accordance with that schedule ; and the rate of deductions may not exceed the amounts specified in that schedule (*o*). It was at one time the practice for the assessment sessions to allow the maximum deduction in every case (*p*) ; but it is now well established that the schedule merely fixes a maximum which may not be exceeded, and a smaller deduction than the maximum has been allowed in cases almost too numerous to mention (*q*). If a deduction greater than the maximum be allowed, this may be made the ground of an appeal against the total of the rateable values entered in the list (*r*).

Special exemptions.—By s. 5 of the Agricultural Rates Act, 1896 (*s*), the value of "agricultural land" as defined by that Act must be stated separately from that of any building or other hereditament. And "agricultural land" must be set down at its full value (*t*).

Difficulties may arise in dealing with land or buildings wholly or partially exempt from rating. Crown property, which is not rateable (*u*), but in respect of which the Government make a contribution in aid of rates, is specially dealt with (*x*). Statutory payments in lieu of tithes, which are made not rateable by the statute creating them, must not be entered in the valuation list, even for the purpose of ascertaining the total rateable value of the parish (*y*). The Valuation (Metropolis) Act, 1869, s. 54,

(*m*) See Appendix II.

(*n*) By s. 4 of the Act the term "hereditament" means any lands, tenements, hereditaments, and property which are liable to any rate or tax in respect of which the valuation list is made conclusive. As the list by s. 45 is made conclusive for purposes of (*inter alia*) income tax, the term "hereditament" would include some properties (such as profits of a manor or fines on granting leases) which are liable to income tax, but not to poor rate. Such properties, by s. 51, are not to be entered in the valuation list.

(*o*) Valuation (Metropolis) Act, 1869, ss. 51, 52 : see Appendix II., *infra*.

(*p*) See *Wood v. Holborn Union* (1871), Ryde's Met. Rat. App. 22.

(*q*) See, for example, *Ryde's Met. Rat. App.* 236, 246 ; *Ryde's Rat. App.* (1886—1890), 178 ; *Ryde's Rat. App.* (1891—1893), 56, 68.

(*r*) See *St. Olave's Union v. St. Saviour's Union*, *Ryde's Rat. App.* (1886—1890), 176. See also *London County Council v. St. George's Union*, [1894] A. C. 600, at p. 606.

(*s*) 59 & 60 Vict. c. 16 ; set out in Appendix II. See also pp. 113—116, *supra*, as to the definition of "agricultural land."

(*t*) *Vide supra*, p. 113.

(*u*) *Vide supra*, pp. 88—102.

(*x*) See U. A. C. Act, 1862, s. 30, in Appendix II. ; and see the decisions of the assessment sessions (as to the form in which entries relating to Crown property are to be made) in *Greenwich Union v. Woolwich Union* (1871), *Ryde's Met. Rat. App.* 25, and *Overseers of Saffron Hill v. Holborn Union* (1881), *ibid.*, 283.

(*y*) *St. Botolph Without, Bishopsgate v. City of London Union* (1881), *Ryde's Met. Rat. App.* 236.

contains a special saving in favour of exemptions and provisions for being rated on exceptional principles of valuation (z). Some hereditaments may, therefore, have to be valued on peculiar principles; as, for example, canals, which are entitled to partial exemption under many special Acts (a); or land acquired by the Postmaster-General for the purposes of the Telegraph Act, 1868 (b). In *R. v. Foundling Hospital* (c) it was, however, held that the gross and rateable values of the hospital as defined by s. 4 of the Valuation (Metropolis) Act, 1869, must be entered in the valuation list, but that the overseers in making the rate must give the hospital the benefit of the partial exemption to which it was entitled under its special Acts. In cases of partial exemption, difficulty may arise from the fact that the valuation list is made conclusive evidence of value for the purpose of *all* rates and taxes, whereas the special exemption may apply only to some rates.

Unoccupied houses.—All property in its nature capable of being rated, though it be not actually rated, must be entered in the valuation list (d). In the case cited it was held that new houses, completely finished and ready for occupation, but not yet occupied, must be inserted in the valuation list. But the assessment sessions held that property, unfinished and not ready for occupation at the date of the making of the list, though finished and occupied before the list came into force, ought not to be entered in the valuation list (e). Such property should apparently be entered in a Provisional List when it comes into occupation, and when so entered it will not affect the total gross or rateable value appearing in the quinquennial list (f), which will remain unaltered until the next quinquennial (or supplemental) list comes into force.

Proceedings following the signing of the list.—After the valuation list is signed by the overseers, the same proceedings are to be had *within the metropolis* as are directed by ss. 17—21 of the Union Assessment Committee Act, 1862, subject to the alterations made by the Valuation (Metropolis) Act, 1869 (g). The sections of the Act of 1862, here referred to, deal with the deposit of the valuation list, the making of objections to such list before the

(z) Note that the corresponding provisions of U. A. C. Act, 1862, s. 36 (which are in force elsewhere) are repealed as to the metropolis by s. 77 of the Valuation (Metropolis) Act, 1869.

(a) *Vide supra*, pp. 118—121.

(b) *Vide supra*, p. 102; and see also *Overseers of St. Gabriel, Fenchurch v. Williams* (1886), 16 Q. B. D. 649; *supra*, p. 102.

(c) (1871), L. R. 7 Q. B. 83.

(d) See *R. v. Malden* (1869), L. R. 4 Q. B. 326.

(e) *Greenwich Union v. Woolwich Union* (1871), Ryde's Met. Rat. App. 25.

(f) See Valuation (Metropolis) Act, 1869, s. 47 (11).

(g) See s. 7 of the Act of 1869, in Appendix II., *infra*.

assessment committee, the holding of meetings to hear objections, the revision and final approval of the list by the committee. These matters have been already dealt with relating to the practice outside the metropolis (*h*). It is, therefore, unnecessary to do more here than to call attention to those special provisions which relate to the metropolis only, and the reader is referred to Chapter XXVII. for the statutory provisions which apply both within and without the metropolis.

Notice of deposit of valuation list.—Public notice (on the church doors) must be given of the deposit of the valuation list (*i*). In the metropolis the notice must state the times at which, and the mode in which objections are to be made (*k*). It is perhaps intended that in the metropolis the notice of deposit should be given on the Sunday next following the deposit, *and on the two following Sundays*, but the language used is not very appropriate to notice of deposit (*l*).

Where the overseers insert in the valuation list some hereditament not previously assessed, or raise the gross or rateable value of some hereditament above the value stated in the valuation list for the time being in force, they must immediately after the deposit of the list serve on the occupier of such hereditament a notice of the gross and rateable value inserted in the valuation list (*m*). It has been doubted (but not definitely decided) whether a valuation list is binding on those who are entitled to, but have not received, notice under this enactment (*n*). The better opinion appears to be that the defect in the notices is cured by s. 45 of the Valuation (Metropolis) Act, 1869, under which the valuation list for the time being in force shall be deemed to have been duly made in accordance with the Act (*o*). Special provision is made as to the service of notices by post, etc. (*p*). Where the owner or lessee is liable to be assessed to, or pay, any rate or tax in the place of the occupier, the notice above referred to must be served on such owner or lessee (*q*); but this provision does not apply where the owner or lessee by arrangement with the occupier in fact pays the rate without being personally liable (*r*).

(*h*) *Vide supra*, pp. 521—532.

(*i*) *Vide supra*, pp. 520, 521, where the method of giving the notice is stated.

(*k*) See Valuation (Metropolis) Act, 1869, s. 10, in Appendix II.

(*l*) *Ibid.*, s. 66.

(*m*) *Ibid.*, s. 9.

(*n*) *Per* BLACKBURN, J., *R. v. Middlesex, JJ.* (1872), L. R. 7 Q. B. 653.

(*o*) *Mayor, etc., of Westminster v. Army and Navy Auxiliary Co-operative Supply*, [1902] 2 K. B. 125; Ryde & Konstam's Rat. App. (1894—1904), 288. See also p. 643, *infra*.

(*p*) See Valuation (Metropolis) Act, 1869, s. 65. Note that s. 42 of U. A. C. Act, 1862, is repealed as to the metropolis.

(*q*) See the Valuation (Metropolis) Amendment Act, 1884, s. 2, in Appendix II.

(*r*) For the cases in which the owner or lessee is personally liable, see p. 61, *supra*.

Transmission of list to assessment committee.—In the metropolis, the overseers must transmit the list to the assessment committee not sooner than fourteen, and not later than seventeen days after notice is given of deposit (which apparently means after public notice on Sunday at the church doors) (*s*). In *R. v. Ingall* (*t*), where all the proceedings were too late, and after the times prescribed by the Valuation (Metropolis) Act, 1869, it was held that the provisions of that Act as to time being directory, the list was valid. It would seem that this decision would also apply where the proceedings were taken too soon; but see, however, *Reigate Union v. South Eastern Rail. Co.* (*u*).

The assessment committee, within fourteen days after the transmission of the list, must give notice to every railway, telegraph, canal, gas, and water company named in the list, and not having any office or place of business in the parish (*v*).

Proceedings in case of default of overseers.—If the overseers of any parish in the metropolis fail to transmit to the assessment committee such a valuation list as is required by the Valuation (Metropolis) Act, 1869, the assessment committee must appoint some person to make a valuation list, and the person so appointed will have the same powers and duties as overseers, and the list so made will be dealt with in the like manner as if it had been made by the overseers (*y*).

If the assessment committee fail to appoint a person to make a valuation list, when the overseers make default, the case appears to fall under the Valuation (Metropolis) Act, 1869, s. 35, which enables the assessment sessions (now the London quarter sessions) (*z*), to appoint a person to make a valuation list; and by s. 37 they may fix some subsequent day, either before or after the day before which all appeals are required to be heard, for receiving the valuation.

It seems clear that, apart from the decision in *R. v. Ingall* (*a*), a list made by order of the assessment committee under s. 13 could not be a nullity for failure to comply with the provisions as to time in s. 42: for a list can be ordered under s. 13 only when the statutory times have been already disregarded, and it cannot be supposed that the statute directs the making of a list which must necessarily be a nullity. The Act contains no directions as to the times within which proceedings may be taken in connection with a list made under s. 13.

(*s*) Valuation (Metropolis) Act, 1869, s. 42 (2): see Appendix II., *infra*.

(*t*) (1876), 2 Q. B. D. 199; Ryde's Met. Rat. App. 176.

(*u*) [1894] 1 Q. B. 411, *supra*, p. 531. decided with reference to U. A. C. Act, 1862.

(*v*) See U. A. C. A. Act, 1864, s. 5, in Appendix II.

(*y*) Valuation (Metropolis) Act, 1869, s. 13, Appendix II.

(*z*) *Vide infra*, p. 670.

(*a*) (1876), 2 Q. B. D. 199, *supra*, p. 629.

Who may object to the valuation list.—The right to object to a valuation list depends on three sections (*b*), not very artistically drawn, the combined effect of which appears to be as follows : An objection may be made by any overseer of any parish in any union who shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union ; or by any person who feels himself aggrieved (*c*) by reason of the unfairness or incorrectness of the valuation of any hereditament, or by reason of the insertion or incorrectness of any matter in the valuation list, or by reason of the omission of any matter therefrom, or by reason of such a valuation list as is required by the Valuation (Metropolis) Act, 1869, not having been transmitted by the overseers to the assessment committee ; and a surveyor of taxes and any ratepayer in the parish has the same right of objecting to the valuation list which relates to his district or parish as is given to any person by the Valuation (Metropolis) Act, 1869, and the Acts incorporated therewith.

Objections by an owner.—By s. 13 of the Poor Rate Assessment and Collection Act, 1869 (*d*), and s. 2 of the Valuation (Metropolis) Amendment Act, 1884 (*e*), the owner or lessee who pays the rates instead of the occupier is given the right of appeal, and therefore impliedly is given the right to object to the list as a preliminary step towards appealing (*f*). It seems clear that where property is unoccupied, the owner is “aggrieved” within s. 18 of the Union Assessment Committee Act, 1862, and therefore has a right of objection. The owner is at any rate liable to pay income tax, for which the valuation list is made conclusive under s. 45 of the Valuation (Metropolis) Act, 1869 ; and the term “ratepayer,” as defined by s. 4 of that Act, means “every person who is liable to any rate or tax in respect of property entered in any valuation list.”

Objections by a surveyor of taxes.—Where the surveyor of taxes gives notice of objection, the amount specified in the notice, as being in his judgment the gross value of any hereditament referred to in the notice, must be inserted by the assessment committee, unless it is proved to their satisfaction that such

(*b*) Section 18 of U. A. C. Act, 1862, and ss. 11, 12 of the Valuation (Metropolis) Act, 1869 : see Appendix II.

(*c*) As to the meaning of the word “aggrieved,” *vide supra*, p. 523. But as the Act of 1869 by s. 12 gives any ratepayer the same right of objecting to the valuation list of his own parish as is given to any person, any ratepayer may object to the list of his own parish whether he is “aggrieved” or not.

(*d*) 32 & 33 Vict. c. 41, in Appendix II. : and see also p. 60, *supra*.

(*e*) 47 & 48 Vict. c. 5, s. 2 : see Appendix II., *infra*. This section seems to have been passed to meet the decision of the assessment sessions in *Mutual Tontine Westminster Chambers Association v. St. Margaret and St. John, Westminster* (1881), Ryde's Met. Rat. App. 247.

(*f*) Section 3 of the last-mentioned Act expressly refers to objections by an owner or lessee.

amount ought not to be so inserted (*g*). In addition to the power of objecting, the surveyor of taxes has also the power of altering the gross value when he receives the duplicate of the valuation list (*h*), and such an alteration may involve a consequential alteration of the rateable value by the assessment committee, in order to comply with the scale of deductions allowed under Schedule III. of the Act of 1869.

The provisions giving the surveyor of taxes a right to object to the valuation list extend only to the metropolis.

Service and contents of the notice of objection.—Notices must be in writing and may be served by post (*i*). The notice must specify the grounds of objection, and the correction desired, and must be given to the assessment committee and to the overseers of the parish; and where the ground of objection is unfairness or incorrectness in the valuation of any hereditament in respect of which any person other than the person objecting is liable to be rated, or the omission of such hereditament, then to such other person (*k*). There is nothing in the Acts rendering it necessary to give notice of objection to the surveyor of taxes.

The objector is limited to the objections stated in his notice, and even if the assessment committee hear other objections, unless the overseers consent to their doing so, the decision on those objections is not a decision against which the objector can appeal under s. 32 of the Valuation (Metropolis) Act, 1869 (*l*). It is true that the committee have power (*m*) to make alterations in the list, "whether any objection be or be not made," and if they determine to treat the case as one in which no notice of objection has been given, they may apparently make a reduction; but in such a case, if the objector desires to appeal, it would probably be safer for him to make a fresh objection on the re-deposit of the list (*n*).

Time for giving notice of objection.—Notice of objection by any person, other than the surveyor of taxes and the overseers, must be given before the expiration of twenty-five days after the list is deposited (*o*) (not twenty-five days after notice of deposit). Notice of objection by the surveyor of taxes and the overseers must be given not less than seven days before the meeting for hearing objections (*p*).

(*g*) Valuation (Metropolis) Act, 1869, s. 53.

(*h*) *Ibid.*, s. 8: *supra*, p. 630.

(*i*) *Ibid.*, s. 65, which permits various methods of service.

(*k*) See U. A. C. Act, 1862, s. 18, and the Valuation (Metropolis) Act, 1869, s. 11, in Appendix II.

(*l*) See *R. v. London J.J.*, [1897] 1 Q. B. 433. In that case the notice of objection related only to the rateable value, and it was held that the objector could not on appeal dispute the gross value.

(*m*) Under U. A. C. Act, 1862, s. 20.

(*n*) *Vide infra*, p. 639.

(*o*) Valuation (Metropolis) Act, 1869, s. 42 (3). This section shortens the time allowed by U. A. C. Act, 1862, s. 18.

(*p*) Valuation (Metropolis) Act, 1869, s. 42 (6).

It has been a very common practice for an assessment committee to hear objections of which notice has not been given in due time. If the committee hear and determine upon an objection, and an appeal is brought against their decision, it has been held by the assessment sessions that the committee cannot be heard to say that the notice of objection was too late, and therefore that their own decision was a nullity (*q*). But the committee are not bound to hear an objection of which notice was given too late, and if they refuse to hear such an objection, it seems clear that the objector would not be "aggrieved by a decision of the assessment committee on an objection made," within either s. 19 or s. 32 of the Valuation (Metropolis) Act, 1869, and therefore he could not appeal either to special or quarter sessions. And the objector could not obtain a *mandamus* to the committee to hear his objection, if he were himself in default.

If the assessment committee are willing to hear an objection of which notice was given too late, it is not open to them to do so if the overseers refuse to waive the objection (*r*). But the committee can alter an assessment even though no objection has been made (*s*).

The hearing of objections.—The assessment committee must revise the valuation list before October 1st, and before that day, but not less than sixteen days after the transmission of the list to them by the overseers, must hold a meeting for hearing objections; and must give notice to the overseers of such meeting not less than sixteen days before the meeting (*t*). The overseers are to publish the notice in the manner in which notice of a rate is required to be given (*u*), on the Sunday next following the receipt of such notice and on the two following Sundays (*x*).

As the "meeting for hearing objections" is generally extended in the metropolis by adjournments extending over several weeks, it is a common practice for the assessment committee to give private notice to individuals of the day on which their objections will be considered; but there is nothing in the Acts requiring this to be done, although the proper hearing of objections against a quinquennial list would be almost impossible without such notice.

(*q*) *Hoare Wilson & Co. v. St. Olave's Union*, Ryde's Rat. App. (1886—1890), 209.

(*r*) See U. A. C. Act, 1862, s. 19, in Appendix II., and *R. v. London JJ.*, [1897] 1 Q. B. 433. That case was decided with reference to defects in the contents of the notice, but it seems equally applicable where the irregularity consists of a failure to serve the notice in due time.

(*s*) U. A. C. Act, 1862, s. 20.

(*t*) See the Valuation (Metropolis) Act, 1869, s. 42 (4), (5), which amends U. A. C. Act, 1862, s. 19.

(*u*) As to the publication of such a notice, *vide supra*, p. 521.

(*x*) Valuation (Metropolis) Act, 1869, s. 66, and U. A. C. Act, 1862, s. 19.

Save that special dates are fixed for the successive stages in the proceedings in the metropolis, the method of making and hearing objections, and the powers of the assessment committee in revising the list, are the same within as outside the metropolis. The reader is requested to refer to the pages dealing with this part of the practice outside the metropolis for fuller discussion of questions of detail (*y*).

Formerly, the guardians might appoint a paid valuer to assist the assessment committee (*z*). But where the assessment committee were appointed by the vestry, the power of appointment was vested in the vestry instead of in the guardians (*a*). It seems clear that the power of the vestry now vests in the borough council elected under the London Government Act, 1899; and in a parish where the power to appoint was before that Act vested in the guardians, it is apparently transferred to the borough council by reason, either of s. 31 (2) of that Act, or the London (Assessment Committees) Scheme, 1902, s. 1 (*b*).

The Valuation (Metropolis) Act, 1869, apparently intends, and it is believed to be the practice, that a valuer appointed under s. 61, should sit as an assessor with the committee during the hearing of objections.

Approval and re-deposit of list.—When the assessment committee have heard and determined all objections (*c*), the list must be approved under the hands of three members of the committee (*d*). When the committee make any alteration in the valuation of any hereditament, or insert any rateable hereditament omitted, they must send the valuation list to the overseers to be re-deposited (in the same manner as originally deposited) (*e*), within three days after it has been approved, and must appoint a day not less than fourteen, nor more than twenty-eight, days after such re-deposit for hearing objections to the alterations, of which objections seven days' notice must be given by the objector (*f*). If a list, as altered, is not re-deposited it is invalid (*g*).

The overseers must give the like public notice of the re-deposit as is directed to be given of the deposit (*h*), which notice must

(*y*) *Vide supra*, pp. 525—527.

(*z*) Valuation (Metropolis) Act, 1869, s. 61. That section reproduces 31 & 32 Vict. c. 122, s. 32, which section is repealed as to the metropolis by s. 77 of the Act of 1869.

(*a*) Valuation (Metropolis) Act, 1869, s. 5 (*b*).

(*b*) *Vide supra*, p. 628. The scheme is set out in Appendix II.

(*c*) This completes the first stage of the revision, which ought to be done before October 1st: see Valuation (Metropolis) Act, 1869, s. 42 (4).

(*d*) See U. A. C. Act, 1862, s. 20.

(*e*) As to the deposit, *vide supra*, p. 630.

(*f*) U. A. C. Act, 1862, s. 21, as amended by Valuation (Metropolis) Act, 1869, s. 42 (7). The amendment gets rid of a difficulty as to times for proceedings, which is met with outside the metropolis: *vide supra*, pp. 529, 530.

(*g*) *R. v. Guardians of Chorlton Union* (1872), L. R. 8 Q. B. 5.

(*h*) *Vide supra*, p. 633.

state the time at which and the mode in which objections are to be made (*i*). And where the committee (otherwise than in determining an objection) have altered the list either by inserting therein some hereditament, or by raising the gross or rateable value of some hereditament included therein, the overseers must immediately after the re-deposit of the list serve on the occupier of such hereditament, a notice of the gross and rateable value inserted in the list (*k*). A failure to serve this notice would probably be held to be cured by s. 45 of the Valuation (Metropolis) Act, 1869 (*l*). Where the owner or lessee is liable to be assessed to, or pay, any rate or tax in the place of the occupier, this notice must be served on such owner or lessee (*m*).

Objections to the valuation list after re-deposit.—Objections, of which seven days' notice must be given, may be made to the alterations made by the assessment committee in revising the list (*n*). The express mention of objections "*to the alterations*" implies that objections cannot be made to assessments which are not the subject of alterations. This view is supported by the direction that notice of objection (to the valuation list generally) shall be given before the expiration of twenty-five days after deposit (*o*), which becomes practically inoperative if objections may be made after re-deposit which could have been made earlier. The provisions of the Act become almost unworkable if objections of every kind may be delayed until after re-deposit, since only one month is allowed for all proceedings after re-deposit, while four months are allowed between deposit and re-deposit (*p*). But it is believed that in practice assessment committees frequently hear objections, after re-deposit, to assessments not already made the subject of objection or alteration.

Notice of objection to the alterations must apparently be given to the same persons as in the case of objections to the list as originally made (*q*), and the notice must, it seems, specify the correction desired (*r*). The assessment committee apparently have power to make further alterations, insertions, and corrections in the list after it has been re-deposited, affecting assessments not previously objected to (*s*). But there is some difficulty in applying this in the metropolis, as the Valuation (Metropolis) Act, 1869, does not apparently contemplate a second re-deposit, or expressly

(*i*) See U. A. C. Act, 1862, s. 21, and Valuation (Metropolis) Act, 1869, s. 10.

(*k*) Valuation (Metropolis) Act, 1869, s. 9 (2).

(*l*) See *Mayor, etc., of Westminster v. Army and Navy Auxiliary Co-operative Supply*, [1902] 2 K. B. 125: Ryde & Konstam's Rat. App. (1894—1904), 288: *infra*, p. 643.

(*m*) Valuation (Metropolis) Amendment Act, 1884, s. 2, in Appendix II.

(*n*) Valuation (Metropolis) Act, 1869, s. 42 (7).

(*o*) *Ibid.*, s. 42 (3).

(*p*) *Ibid.*, s. 42 (1), (4), (8).

(*q*) *Vide supra*, p. 636.

(*r*) See Valuation (Metropolis) Act, 1869, s. 11.

(*s*) See U. A. C. Act, 1862, s. 21, and the remarks thereon, *supra*, p. 530.

provide for objections to alterations made after the first re-deposit (*t*). But in *South Eastern Rail. Co. v. City of London Union* (*u*), the assessment committee altered the assessment of the appellants' property after the list had been twice re-deposited, and after the date prescribed for final approval of the list, and it was held by the London quarter sessions that the alterations were valid. In that case, it was contended by the respondents that the committee might legally make alterations again and again, provided that after every alteration the list were re-deposited, and notice were given to the ratepayer affected. Whether the court adopted this contention is not very clear. In the case just referred to, the ratepayer had an opportunity of objecting to, and appealing against, the alteration of his assessment: whether he would be bound by the alteration, if he had not that opportunity, is, perhaps, doubtful.

Final approval of valuation list.—When the assessment committee have heard and determined all objections, and made such alterations, corrections and insertions as seem proper, they are to finally approve the list (*v*). When they have finally approved the list, and (apparently) before they have signified their approval in writing, they must cause the totals of the gross and rateable value to be ascertained and inserted in the list (*y*). The total rateable value of the "agricultural land," as defined by the Agricultural Rates Act, 1896 (*z*) (if there is any "agricultural land" in the parish), must be stated separately from the total rateable value of the buildings or other hereditaments; and whenever a copy of the total rateable value is required to be sent to any person such copy must state both totals (*a*). Special provision is made for the entry of the value of Crown property (in respect of which a contribution in aid of the rates is made) in calculating the total (*b*).

Three members of the assessment committee present at the meeting when the list is finally approved must sign the declaration of approval and certificate of compliance with the Valuation (Metropolis) Act, 1869 (*c*). One duplicate of the list must be

(*t*) See s. 42 (7), (8), which shows that alterations and objections thereto could hardly be made in the time prescribed for completing the revision.

(*u*) Ryde's Rat. App. (1891—1893), 41.

(*v*) U. A. C. Act, 1862, ss. 20, 21.

(*y*) Valuation (Metropolis) Act, 1869, s. 14; and the note to Schedule II., Part I., in Appendix II.

(*z*) As to the definition of "agricultural land," *vide supra*, p. 113.

(*a*) Agricultural Rates Act, 1896, s. 5, in Appendix II.

(*b*) See U. A. C. Act, 1862, s. 30, in Appendix II. See also p. 631, note (*x*), *supra*, as to the form of the entry, and the method of dealing with other property wholly or partially exempt from rating; and as to totals for the levying of sewers rate, see 38 & 39 Vict. c. 33, in Appendix II. This enactment may however be modified by a scheme under s. 10 of the London Government Act, 1899 (62 & 63 Vict. c. 14).

(*c*) See U. A. C. Act, 1862, ss. 20, 21; and the Valuation (Metropolis) Act, 1869, s. 14, and Schedule II., Part I., in Appendix II.

sent to the overseers of the parish to which it relates (*d*), and the other duplicate to the clerk of the London County Council, who by virtue of s. 44 of the Local Government Act, 1888, is now substituted for the clerk to the managers of the Metropolitan Asylum District. All this must be done before November 1st (*e*). As to the future custody of the duplicate sent to the clerk of the county council, and the printing and distribution of the totals of all the valuation lists in the metropolis, see ss. 16, 17, 42 (11), and 68 of the Valuation (Metropolis) Act, 1869, and ss. 2 and 3 of the Metropolis Management Amendment Act, 1875 (*f*). The overseers, on receiving their duplicate of the valuation list, must immediately deposit it in the place in which the rate books of the parish are kept (*g*), and must publish notice of the deposit, and of the time and mode of making appeals, and of the grounds on which an appeal is allowed to be made (*h*). The notice must be published at the church doors on the Sunday next following the receipt of the list, and the two following Sundays, in the manner in which notice of a rate is required to be published (*i*).

Commencement and duration of list.—A quinquennial, or supplemental, valuation list as approved by the assessment committee, and (if altered on any appeal) as so altered, comes into force at the beginning of the year (*k*) (commencing on April 6th) succeeding that in which it is made. If it is a quinquennial list, it lasts for five years, subject to any alterations that may be made by supplemental or provisional lists; if it is a supplemental list, it lasts, subject to the like alterations, until the next quinquennial list comes into force (*l*).

Notwithstanding any appeal (*m*) which may be pending at the commencement of the year, the list comes into force unaltered, and all rates and taxes are to be based upon it; and where in consequence of a decision on an appeal an alteration is made in the list, “which alters the amount of the assessment, contribution, rate, or tax levied thereunder,” and it is found that too much or too little has been paid, the difference must be repaid or allowed to the ratepayer, or may be recovered from him (*n*). And it seems that it is not possible to suspend the operation of the section here quoted, so that rates may be paid on a previously existing valuation, even

(*d*) Valuation (Metropolis) Act, 1869, s. 14.

(*e*) *Ibid.*, s. 42 (8). (*f*) 38 & 39 Vict. c. 33: see Appendix II.

(*g*) Any ratepayer may inspect the list, and take copies or extracts, without fee or charge: Valuation (Metropolis) Act, 1869, s. 67.

(*h*) *Ibid.*, s. 15.

(*i*) *Ibid.*, s. 66. As to the publication of a rate, *vide supra*, p. 521.

(*k*) See the definition of “year” in Valuation (Metropolis) Act, 1869, s. 4.

(*l*) *Ibid.*, ss. 43, 46.

(*m*) An appeal to sessions must be distinguished from an objection before the assessment committee. If objections are still pending, the list cannot have been finally approved by the committee, and it would apparently be of no force whatever.

(*n*) Valuation (Metropolis) Act, 1869, s. 44.

by agreement between the ratepayer and the persons entitled to demand the rate. For in a case (*o*) in which, on an appeal against an increased valuation, it was agreed between the assessment committee and the ratepayer, that a special case should be stated for the opinion of the High Court of Justice, and that, until that case had been decided, the rates should be paid upon the basis of the old valuation, it was held that such an agreement could not bind the overseers, who were no parties to it; and that, even if the assessment committee could be taken as representing the overseers, they could not make an agreement in the very teeth of the Act of Parliament. Consequently, it was held that a *mandamus* had been rightly granted, on the application of the overseers, to compel the magistrates to issue a distress warrant for the recovery of the rates, calculated on the basis of the new valuation list under appeal. In *Burton v. Bloomsbury Vestry* (*p*) the tenant of an advertising station appealed to quarter sessions against a supplemental list on the ground that he was not the occupier, and his name was ordered to be struck out by the Queen's Bench Division, on a case stated by the sessions. Before the decision was given, the appellant had paid rates based on a provisional list which was in force before the supplemental list (the subject of the appeal) came into force. The appellant brought an action to recover back the sums paid under the rates based on the provisional list, and it was held that he was entitled to do so under s. 44. Assuming that the section applies not only when an assessment is reduced, but when the name of an occupier is struck out, still it is submitted that the judgment is open to great doubt, for s. 44 deals with the effect of an appeal against a list, where the decision alters the "amount of any rate levied thereunder"; and it gives to the list as altered on appeal no retrospective effect on any rates based on the list previously in force. The judgment ignores the fact that the rates in question were not levied under the list the subject of the appeal, but under a list previously in force. Had that list been a quinquennial list, it is submitted that the action could not have succeeded. It was, in fact, a provisional list; but repayments of rates based on provisional lists are governed by s. 47 (10), which clearly did not assist the plaintiff.

Effect of the valuation list.—By s. 45 of the Valuation (Metropolis) Act, 1869, "the valuation list for the time being in force shall be deemed to have been duly made in accordance with this Act and the Acts incorporated herewith." It is difficult to decide what is the precise effect of these words. They can hardly

(*o*) *R. v. Marsham* (1883), 50 L. T. 142.

(*p*) [1901] 1 K. B. 650; Ryde & Konstam's *Rat. App.* (1894—1904), 254. The headnote in the Law Reports wrongly assumes that the rates, which were the subject of the action, were based on the valuation list which was the subject of the appeal. The rates in question were made before that list came into force.

mean that every list purporting to be “the valuation list” shall be deemed to have been duly made; and the words “shall be deemed” are apparently contrasted with the words “shall be conclusive evidence of value,” which follow in the same section. Again, no list can (strictly speaking) be said to be “the valuation list for the time being in force” unless it has been, in some sense, duly made. The section may have been intended to enact one of two things: (1) that defects in the proceedings connected with the making should not necessarily render the list invalid (*q*); or (2) that the list should be deemed to be duly made until the contrary was proved, thereby throwing the burden of proof on those who disputed the validity of the list. The effect of s. 45 was considered (but not definitely determined) in *Mayor, etc. of Westminster v. Army and Navy Auxiliary Co-operative Supply (r)*, in which it was suggested that the words “the valuation list for the time being in force” must be understood by referring back to s. 43, which provides that the list, as approved by the assessment committee, “shall come into force” on April 6th, and shall last for five years; and that s. 45 meant that a list *de facto* in existence at a particular time shall be deemed to be duly made, until the next valuation list comes into force.

The valuation list is made conclusive evidence of the fact that all hereditaments required to be inserted therein have been so inserted (*s*). Therefore, if by accident any hereditament is omitted from the quinquennial list, it seems that it will escape rateability for five years; and it will not be permissible to enter it in any supplemental list, since that list must be made out on the assumption that the list in force at the commencement of each year is correct, and only such alterations as have taken place during the preceding twelve months can be entered in a supplemental list (*t*). It is true that by virtue of ss. 7 and 46 (3) of the Valuation (Metropolis) Act, 1869, the provisions of s. 20 of the Union Assessment Committee Act, 1862, are applied to the revision of a supplemental list, and under that section the assessment committee have power to insert a hereditament omitted from the supplemental list; but the last-mentioned section is incorporated with the Act of 1869, “subject to the alterations made” by that Act, and, therefore, subject to the provisions of s. 46 (1) of the Act of 1869. Again, the power to insert a hereditament omitted from the supplemental list cannot apply in the case of a hereditament rightly omitted; and if, under s. 46 (1) of the Act of 1869, a hereditament not

(*q*) Failure to obey the statutory directions as to time does not invalidate the list: *vide supra*, p. 629.

(*r*) [1902] 2 K. B. 125; *Ryde & Konstam's Rat. App.* (1894—1904), 288.

(*s*) Valuation (Metropolis) Act, 1869, s. 45.

(*t*) *East and West India Docks v. Poplar Union* (1884), 13 Q. B. D. 364, *infra*, p. 650; Valuation (Metropolis) Act, 1869, s. 46 (1).

affected by an alteration within the preceding twelve months is rightly omitted from a supplemental list, s. 20 of the Union Assessment Committee Act, 1862, carries the matter no further.

It seems that the valuation list is conclusive even where a mere clerical error has been made (*u*), since provision is made for the correction of clerical errors in a rate, but not in a list (*v*). Therefore, if, in deciding on an objection, the assessment committee by mistake alter the wrong entry in the list, or make a wrong alteration, the only remedy is to appeal (*x*).

Hereditament becoming liable to be rated in parts.—Some difficulty may arise in the application of a proviso (*y*) in s. 28 of the Union Assessment Committee Act, 1862, which applies to the metropolis. It enables the overseers, without making a supplemental list, to make an apportionment of the value stated in the valuation list, where by reason of an alteration in the occupation of property, such property becomes liable to be rated in parts not separately rated in the list. It is not very clear what is the remedy if the ratepayer wishes to dispute the apportionment made by the overseers. The proviso as it stood in the Union Assessment Committee Act, 1862, created no difficulty, because the ratepayer could at any time appeal against a rate on questions of amount; but when incorporated with the Valuation (Metropolis) Act, 1869, the proviso does not seem very apt. For the general scheme of the later Act is to have all questions of amount determined before the valuation list comes into force: changes are provided for by the making of supplemental lists at stated times (*z*), and the dispute as to the apportionment may not arise until it is too late to insert the hereditament in a supplemental list, and in that case the Valuation (Metropolis) Act, 1869, seems to provide no adequate remedy. It may possibly have been intended that the ratepayer should in such a case have the same right to appeal against the rate, as he would have had if the Act of 1869 had not been passed. If so, this appears to be the only case in which an appeal against a rate on questions of value can be brought within the metropolis since the passing of the Act of 1869, though an appeal against a rate on other grounds can still be brought (*a*).

(*u*) Perhaps it would not be so where the clerical error was manifest and involved an impossibility on the face of the list; *e.g.*, if the rateable value were larger than the gross value of the same hereditament.

(*v*) Valuation (Metropolis) Act, 1869, s. 71.

(*x*) *Ball v. St. James and St. John, Clerkenwell* (1881), Ryde's Met. Rat. App. 249.

(*y*) Note that the remainder of s. 28 of the Act of 1862 is repealed, as to the metropolis, by s. 77 of the Valuation (Metropolis) Act, 1869.

(*z*) Under the Act of 1862 a supplemental list may be made at any time. The provisions of s. 47 of the Valuation (Metropolis) Act, 1869 (under which a provisional list may be made at any time), seem not to apply to the case with which we are now dealing.

(*a*) *Vide infra*, p. 646.

What rates are governed by the valuation list.—The valuation list is made conclusive evidence of gross and rateable value for the purpose of the rates and taxes mentioned in s. 45 of the Valuation (Metropolis) Act, 1869 (*b*). Under that section, the income tax was to be based upon the gross value as stated in the list, but now by s. 35 of the Finance Act, 1894 (*c*), certain deductions for the cost of repairs are to be made in order to arrive at the assessment on which the income tax is to be based.

The valuation list is also made conclusive evidence of value for the purposes of water rate, by reason of the Water Rate Definition Act, 1885 (*d*), which by s. 1 makes the water rate payable on the rateable value as settled from time to time by the local authority, within the “metropolis,” “provided that where the water rate is chargeable on the annual value of a part only of any hereditament entered in the valuation list, such annual value shall be a fairly apportioned part of the rateable value of the whole tenement,” the apportionment in case of dispute to be determined by two justices, in accordance with s. 68 of the Waterworks Clauses Act, 1847 (*e*).

Special provision is made by s. 76 of the Valuation (Metropolis) Act, 1869, for cases where it becomes necessary to make a separate valuation of a hereditament not separately valued in the list, for the purposes of house duty, income tax, and the Licensing Acts. By s. 45 the valuation list was made conclusive evidence for the purpose of determining (*inter alia*) the qualification (*f*) of a vestryman under the Metropolis Management Act, 1855; and in *Gordon v. Williamson* (*g*) it was held that where a vestryman occupied property which was of a sufficient value, but was not separately valued in the valuation list, because it formed part of a larger hereditament, the vestryman was not disqualified; and that the enactment that the list should be conclusive evidence of something stated in it (*viz.*, the value of the property as a whole) did not mean that no other evidence should be given of something not stated in it (*viz.*, the value of the part separately occupied).

For what purposes the valuation list is not conclusive.—The general scheme of the Valuation (Metropolis) Act, 1869, is to

(*b*) Outside the metropolis the valuation for the house tax and income tax need not necessarily follow the poor rate valuation; see, as to house tax, *Walker v. Brisley*, [1902] 2 Q. B. 735.

(*c*) 57 & 58 Vict. c. 30.

(*d*) 48 & 49 Vict. c. 34.

(*e*) 10 & 11 Viet. c. 17.

(*f*) The Local Government Act, 1894, s. 31, has abolished the necessity for having a rating qualification, and s. 89 of the same Act repeals s. 6 of the Metropolis Management Act, 1855, which required such a qualification. But the principle of the case cited in the text appears to be of general application.

(*g*) [1892] 2 Q. B. 459. *Cf. Attorney-General v. Bournemouth Corporation*, [1902] 2 Ch. 714, in which it was held that s. 18 of the Tramways Act, 1870 (which makes notice by the Board of Trade conclusive evidence of a certain fact), did not exclude other evidence of that fact, where no notice by the Board of Trade had been given.

make the valuation list "conclusive evidence" of value, and to dispose of all questions of value (so far as it is possible to do so) before the valuation list comes into force (*h*). On questions of value, the right to appeal against a rate which was given by earlier Acts (*i*) is consequently taken away by the Act of 1869, and the right to appeal against the valuation list is substituted; but that Act leaves untouched the right of appeal on other grounds (*k*). Thus the valuation list is not conclusive of the fact that the person therein named as the occupier is in fact rateable as the occupier. It would obviously be inconvenient that it should be conclusive on this point, because shops and houses are very likely to change hands from time to time. If when a rate is made the wrong person is rated, he can appeal against the rate. Thus in *Smith v. Lambeth Assessment Committee* (*l*), Messrs. W. H. Smith & Son appealed to the Surrey quarter sessions *against a rate*, on the ground that they were not the "occupiers" of their bookstall at Waterloo Station; the appeal was brought to the quarter sessions of the county in which the hereditament lay, under 43 Eliz. c. 2, and 17 Geo. 2, c. 38. Had they been limited to the right of appeal under the Valuation (Metropolis) Act, 1869, they must have appealed *against the valuation list*, and to the assessment sessions, which was the court constituted under that Act, and had jurisdiction over the metropolis. The Local Government Act, 1888, has transferred the jurisdiction of the assessment sessions to the county of London quarter sessions (*m*), so that at the present time whether the appeal be against the rate, or against the list, *outside the city of London*, it must be taken to the county of London quarter sessions (*n*); but in the city of London, an appeal against a rate must be taken before the quarter sessions for the city of London, while an appeal against the valuation list must be taken to the quarter sessions for the county (*n*).

Again, the valuation list is not conclusive on the question whether a hereditament mentioned therein is specially exempt by

(*h*) See ss. 42—45.

(*i*) 43 Eliz. c. 2, s. 5; 17 Geo. 2, c. 38; 41 Geo. 3, c. 23. Note that ss. 6, 7 of the Parochial Assessments Act, 1836, which gave a right of appeal against a rate to special sessions, on questions of value, are expressly repealed as to the metropolis by s. 77 of the Valuation (Metropolis) Act, 1869.

(*k*) *London and India Docks Co. v. Woolwich*, [1902] 1 K. B. 750; Ryde & Konstan's Rat. App. (1894—1904), 260.

(*l*) (1882). 9 Q. B. D. 585, affirmed 10 Q. B. D. 327, *supra*, p. 36. And note that the case was heard, after a *mandamus* to hear and determine had been issued, the sessions having allowed a preliminary objection on the ground that the appeal had been entered too late: see 6 Q. B. D. 100. It is hardly likely that the objection (if a good one) that the appeal was wrong in form and before a wrong tribunal, could have been overlooked at the sessions, and on showing cause against the rule for a *mandamus*.

(*m*) *Vide infra*, p. 670.

(*n*) An appeal against a valuation list, on questions of value only, may be taken to special sessions, either within or without the city, under ss. 18—22 of the Valuation (Metropolis) Act, 1869.

statute, and the occupier may appeal against the rate, *e.g.*, on the ground that the hereditament is occupied by a society for the promotion of literature, science, or the fine arts under 6 & 7 Vict. c. 36 (*o*), as was done in *Overseers of Savoy v. Art Union of London* (*p*), and in *R. v. Institution of Civil Engineers* (*q*). In the last-mentioned case, an appeal against a rate for a parish within the metropolis was taken to the Middlesex quarter sessions, whereas an appeal against the valuation list must have been taken to the assessment sessions, under the Valuation (Metropolis) Act, 1869; the distinction between the two forms of appeal was thus emphasized in the same way as in *Smith v. Lambeth Assessment Committee*, cited above. In *London and India Docks Co. v. Woolwich Union* (*r*), it was held that the company could appeal against a rate on the ground that they were entitled to a partial exemption from rating in respect of a dock in the borough of Woolwich, as being "land covered with water," under s. 211 of the Public Health Act, 1875, and the schemes made under the London Government Act, 1899; and that they were not bound by the valuation list, in which the dock (together with other property not entitled to any exemption) was rated as one hereditament, in one lump sum, without distinguishing the value of the property partially exempt.

Although an appeal on the ground of non-occupation, or on the ground of special exemption, *may* be brought against the rate after the valuation list is finally settled, yet the person affected is not bound to wait till a rate is made, and may appeal against the valuation list. Instances of appeals against the valuation list on the ground that the appellant was not in occupation (*s*) or was specially exempt (*t*) are given in the notes.

(*o*) *Vide supra*, p. 103.

(*p*) [1896] A. C. 296, *supra*, p. 107.

(*q*) (1879), 5 Q. B. D. 48. In *London Institution v. Mayor, etc. of London* (unreported, July 7th, 1899), an appeal against a rate (in which exemption was claimed under the same Act) was heard before the Recorder of the City of London, presiding at the City of London quarter sessions. Had the appeal been against the valuation list it must have been taken to the quarter sessions for the county of London.

(*r*) [1902] 1 K. B. 750; *Ryde & Konstam's Rat. App.* (1894—1904), 260.

(*s*) *London, Brighton and South Coast Rail. Co. v. Stepney Union* (1871), *Ryde's Met. Rat. App.* 48; *London and North Western Rail. Co. v. Poplar Union* (1881), *ibid.*, p. 275; *Rouse v. City of London Union*, *Ryde's Rat. App.* (1886—1890), 124 (and see especially, p. 128); *Midland Rail. Co. v. St. Mary, Islington* (1886), *ibid.*, p. 139; *Rickett Smith & Co. v. Poplar Union* (1886), *ibid.*, p. 150.

(*t*) *Geological Society v. Strand Union* (1871), *Ryde's Met. Rat. App.* 24; *Mayor, etc. of London v. City of London Union*, *Ryde's Rat. App.* (1886—1890), 130; *Charrington v. Mile End, Old Town*, *Ryde's Rat. App.* (1891—1893), 14; *Cantlon v. Holborn Union*, *ibid.*, p. 30; *Pearson v. Holborn Union*, *ibid.*, p. 303.

CHAPTER XXXIII.

SUPPLEMENTAL AND PROVISIONAL LISTS.

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Supplemental and provisional lists : when necessary.—By s. 46 (1) of the Valuation (Metropolis) Act, 1869 (*a*), "In each of the first four years [after the making of the quinquennial list] a supplemental list shall, if necessary, be made out in the same form as the valuation list, and shall show all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations." And by s. 47, "If in the course of any year the value of any hereditament is increased by the addition thereto or erection thereon of any building, or is from any cause increased or reduced in value" (*b*), a provisional list may be made. Although the language used in the two sections is not identical, it has been held that the meaning of the two sections is the same. "The alterations in the supplemental list seem to be the confirmed provisional valuations. It seems to follow that whether one is dealing with the supplemental list or with the provisional list, the question whether there has been such an alteration in the value of the premises as to justify an alteration in the valuation, seems to be the same in either case" (*c*). It has been decided at quarter sessions that it is not

(*a*) See Appendix II.

(*b*) The last two words must apparently be rejected as surplusage.

(*c*) *Ellis v. Camberwell Assessment Committee*, [1900] 1 Q. B. 68, at p. 74 ; *Ryde & Konnam's Rat. App.* (1894—1904), 195, at p. 202. In the same case, the House of Lords confirmed the view above stated ; *vide infra*, p. 652.

necessary that property should be first put into a provisional list before it can be put into a supplemental list (*d*). A contrary decision would have involved the result that, if an alteration took place at so short an interval before April 5th (the close of the statutory "year") that it was impossible for the overseers to make out a provisional list before the end of the "year," the property could not be entered in the next or any subsequent supplemental list; for, as to a subsequent supplemental list, the "alteration" would not have taken place within the preceding twelve months, and so would not be within s. 46 (1).

It was at one time thought that there must be a structural alteration of the hereditament itself, as distinguished from an alteration in its value, to warrant its insertion in a supplemental or provisional list. But the following propositions are now established: (1) A structural alteration of the hereditament itself is not required to warrant the insertion of the hereditament in a supplemental (*e*) or provisional list (*f*); (2) But an alteration in value is not sufficient unless it is shown to be due to a change in circumstances affecting the value, and the burden of proving the cause of an alteration in value is on those who seek to alter the valuation (*g*); (3) Though an alteration in value, if caused by a change in circumstances, may be sufficient, a mere temporary falling off in receipts in one year which will be rectified by an increase in the next year, is not sufficient (*h*); (4) The fact constituting the alteration in value must be one which affects the hereditament in question in particular, or a particular class of hereditaments, and it must be shown that the alteration does not arise from a cause affecting all classes in the community; for a general rise in values is not sufficient (*i*); (5) To warrant insertion in a supplemental list the alteration must have taken place during the twelve months preceding the making of the list (*j*), though facts happening before the twelve months may be given in evidence to prove an alteration in value within the twelve months (*k*); (6) Where an alteration within the twelve months is proved, the hereditament must not be re-valued *de novo*; but the valuation list in force at the commencement of the twelve months must

(*d*) *British Equitable Assurance Co. v. City of London Union*, Ryde's Rat. App. (1886—1890), 229.

(*e*) *R. v. New River Co.* (1879), 4 Q. B. D. 309; Ryde's Met. Rat. App. 223, *infra*, p. 650; *R. v. Poplar Union (East and West India Dock Case)* (1884), 13 Q. B. D. 364; Ryde's Met. Rat. App. 347, *infra*, p. 650; *Camberwell Assessment Committee v. Ellis*, [1900] A. C. 510; Ryde & Konstam's Rat. App. (1894—1904), 195, *infra*, p. 651.

(*f*) *R. v. St. Mary, Islington* (1887), 19 Q. B. D. 529; Ryde's Rat. App. (1886—1890), 272; *Camberwell Assessment Committee v. Ellis*, *supra*.

(*g*) *Camberwell Assessment Committee v. Ellis*, *supra*.

(*h*) *R. v. Poplar Union (East and West India Dock Case)*, *supra*.

(*i*) *Camberwell Assessment Committee v. Ellis*, *supra*.

(*j*) *R. v. Poplar Union; Camberwell Assessment Committee v. Ellis*, *supra*.

(*k*) *R. v. Poplar Union*, *supra*.

be assumed to be correct, and the supplemental list must merely show the effect of the alteration in value within the twelve months (*l*).

The New River Case.—It may be useful now to state the facts of some of the cases above referred to. In *R. v. New River Co.* (*m*), the company's property was put into a supplemental list made in 1877 in respect of the increased value of the mains, pipes, and reservoirs derived from the connection of the mains existing before April 6th, 1876, with houses built between that date and April 6th, 1877. It was held that the entry in the supplemental list was right. CROCKBURN, C.J., said (*n*) :

“ The matters stated in the valuation list (that is, the quinquennial list) include, amongst others, the gross and the rateable value. If therefore any alteration has taken place in any year of the quinquennial period in the gross or rateable value, that is to be the subject matter of this supplemental list (*o*). . . . If by any extraordinary and unlooked-for circumstances the value of the given property should be greatly increased on the one hand, or greatly decreased on the other, then the assessment ought not to continue to exist and taxes to be levied upon such an altered state of circumstances. . . . It is only where substantial alterations have taken place, which really do make all the difference to the individual who is to be assessed on the one hand, or to the parish which is to have the benefit of the tax on the other, that an inquiry should be directed.”

The East and West India Dock Case.—In the *East and West India Dock Case* (*p*), the company appealed against the omission of their docks from a supplemental list made in 1882, and tendered evidence of the net profits for the years 1874 to 1881, within which period there had been a very serious fall, although it was admitted that there had been no structural alteration of the docks within the twelve months preceding the making of the rate. It was held that all the evidence was admissible, and *prima facie* showed an “alteration” within s. 46 of the Valuation (Metropolis) Act, 1869 ; but that the supplemental list must show only the effect of the “alteration” in the last twelve months and not the true present value of the docks. BRETT, M.R., said (*q*) :

“ Unless the company can show that, by reason of something which has happened within the year preceding their application, the rateable value of their docks has altered, the valuation in the quinquennial list must stand whether it was right or wrong at the time when it was fixed. [After deciding that a *permanent* diminution in the tonnage of ships coming into the docks was evidence of a fall in rateable value, he continued :] The existing valuation

(*l*) *R. v. Poplar Union*, *supra*.

(*m*) (1879). 4 Q. B. D. 309 ; Ryde's Met. Rat. App. 223.

(*n*) 4 Q. B. D., at p. 312.

(*o*) The decision in *Camberwell Assessment Committee v. Ellis*, [1900] A. C. 510 ; Ryde & Konstam's Rat. App. (1894—1904). 195 ; *infra*, p. 651 ; seems to show that this sentence must be taken to apply only to cases in which there has been a change of circumstances specially affecting the particular hereditament.

(*p*) *R. v. Poplar Union* (1884), 13 Q. B. D. 364 ; Ryde's Met. Rat. App. 347.

(*q*) 13 Q. B. D., at pp. 368—370.

unappealed against should be taken to be correct, and what you have to do is, treating the existing list as correct, to see whether what has occurred since has altered that which was the rateable value before. If that be true it seems to me that the [gross] rateable value in the supplemental list is also to be ascertained by assuming that the value in the list then in force is correct at the commencement of the year, and by adding to or taking from such value the addition or diminution, as the case may be, arising from the alteration during the year. When the alteration has been thus ascertained, the value as altered is to be entered in the supplemental list."

And BOWEN, L.J., said (*r*):

"The fact of there being less tonnage coming into the docks, with the light shed upon it by a previous continuous fall in former years, amounts to some evidence that during the last year the rateable value of the docks was not what it was before."

It has been frequently argued that the decisions that a mere alteration in value is sufficient to warrant the making of a supplemental list have, in effect, repealed the provisions of the Valuation (Metropolis) Act, 1869, rendering the quinquennial list binding for five years. But in *R. v. New River Co.* (*s*), COCKBURN, C.J., expressly said that only "substantial alterations" could be inquired into. In the *East and West India Dock Case* (*t*), BOWEN, L.J., said: "The value is to be fixed every five years, but a machinery is provided for re-adjusting it when necessary, but only upon certain conditions, and within certain limits. The quinquennial list was to be a reality, and it was to last for five years." The decision of the House of Lords, referred to in the next paragraph, seems to show that the language used in earlier cases must be read with reference to the special facts of those cases, in each of which there was undoubtedly a change of the circumstances affecting the value of the hereditament in question.

Increased price given for public-house.—In *Ellis v. Camberwell Assessment Committee* (*u*), the appellant was the occupier of a public-house, rated in the quinquennial list made in 1895 at 405*l.* rateable value, and put in a supplemental list made in 1897 at 485*l.* rateable value. The appellant had bought the lease of the premises in October, 1896, for 16,400*l.*; it was not known what price had been paid for the lease previously, but the valuation list had been apparently based on a supposed premium of 6,400*l.* An expert witness for the respondents gave evidence that in his opinion the annual value of the premises had increased by 100*l.* between April and October, 1896; but it was admitted that there had been no structural alteration. The sessions found that there had been

(*r*) 13 Q. B. D. 371.

(*s*) (1879), 4 Q. B. D. 309, at p. 313, *supra*, p. 650.

(*t*) *R. v. Poplar Union* (1884), 13 Q. B. D. 364, at p. 372.

(*u*) [1900] A. C. 510; *Ryde and Konstan's Rat. App.* (1894—1904), 195.

an alteration in value by way of increase between April, 1896, and April, 1897, but the Court of Appeal (reversing the judgment of the Queen's Bench Division) held that there was no evidence of an "alteration" within s. 46 : (1) because there was nothing to show what was the premium paid by the appellant's predecessor, and therefore there was nothing with which to compare the premium paid in 1896 ; and (2) because the evidence of the expert witness was consistent with a general rise in values, resulting from general prosperity ; and that the onus of proving that there had been an alteration in value was not satisfied by such evidence. This decision was affirmed by the House of Lords, who held that, although it was not necessary for the making of a provisional or supplemental list, that there should be a structural alteration of the hereditament itself, there must be some change of circumstances affecting the value ; and that those who sought to alter the valuation list must prove the cause of the alteration in value ; but that it was impossible to lay down a general rule defining the change of circumstances which must be shown. In the House of Lords it was apparently considered that the same considerations applied to supplemental and provisional lists, under ss. 46 and 47 of the Valuation (Metropolis) Act, 1869, as (though the appeal related to a supplemental list made under s. 46) Lord HALSBURY referred to ss. 46 and 47, and Lord SHAND and Lord DAVEY to s. 47 (*x*). Lord HALSBURY, in giving judgment, said (*y*) :

"The opening of a bridge, the opening of a new street—all these things which have relation to the particular hereditament to be rated—might be properly applicable and properly considered in relation to an alteration of circumstances to allow the hereditament to be valued again. . . . I lay down no general proposition of law beyond this—that the statute has to be construed in each case and applied to the circumstances of each case."

And Lord SHAND said (*z*) with reference to s. 47 :

"If you are to read those words 'is from any cause increased or reduced in value' in the wide sense which is contended for by the appellants, it appears to me that you would have no longer a quinquennial valuation—it would come to be substantially an annual valuation by the mere proof that the value of the subject had from some cause or other (I do not care what it may be) either appreciated or depreciated. I do not think that can be the sound reading of the statute. The cases have, perhaps, gone rather far in that direction. I am of opinion that it must be something analogous—not necessarily closely analogous, but still analogous—to the case that is there put of 'the addition thereto or the erection thereon of any building,' or for some similar cause such as would affect the appreciation or depreciation of the particular building with which you are dealing."

(*x*) See [1900] A. C. at pp. 516, 517, 520, 523 ; Ryde and Konstam's Rat. App. (1894—1904), at pp. 207, 208, 212, 214.

(*y*) [1900] A. C. at pp. 519, 520 ; Ryde and Konstam's Rat. App. (1894—1904), at p. 211.

(*z*) [1900] A. C. at pp. 521 ; Ryde and Konstam's Rat. App. (1894—1904), at p. 212.

And Lord DAVEY said (a) with reference to the introductory clause of s. 47 :

“Those words cannot be confined to structural alteration or addition or anything of that kind, but I think that the words ‘from any cause’ are to be read as *ejusdem generis* in this sense—it must be a cause which affects the value of the particular property. . . . It is not sufficient to say that there has been an alteration in value, but you must also point to some definable cause to which that alteration is due, and that cause must be one which affects the assessable value of the particular property. It may affect the assessable value of other properties as well, but it must, in my opinion, be a cause which directly affects the assessable value of the particular hereditament in question. . . . A mere alteration in value is not sufficient. What I understand to have been found is that there has been an alteration in the value of these premises by way of increase in the period between April, 1896, and October, 1896, but that that alteration is due to a general increase in the value of public-house property in the metropolis. I do not think that is sufficient.”

The meaning of a “change of circumstances.”—In the previous paragraph it has been shown that the House of Lords have decided that, in order to warrant the insertion of a hereditament in a provisional or supplemental list, there must be a change of circumstances specially affecting the value of that particular hereditament; but the House of Lords did not define what change of circumstances would be sufficient. A few cases are here collected as instances of the way in which the London quarter sessions have interpreted the decision of the House of Lords.

In *Stunt v. Lewisham Union* (b), the owner of eight small houses, in March, 1900, made a return under s. 55 of the Valuation (Metropolis) Act, 1869, showing the rent of each house to be 7s. 6d. per week. On April 16th, 1900, he raised the rent of each house to 9s. per week, but this fact did not become known to the overseers until April, 1901, when they increased the assessment entered in the quinquennial list (which was probably based on the return made in March, 1900) from 11l. to 12l., and entered the property first in a provisional list, and then in the supplemental list made in 1901. The London quarter sessions upheld the supplemental list (c). This decision may, perhaps, have been based on the ground, not that there was an alteration of value within the year, but that the assessment in the quinquennial list was based on a misleading—or even fraudulent—return, and that the appellant could not be allowed to take advantage of his own wrong.

(a) [1900] A. C. at pp. 523, 524; Ryde and Konstam's Rat. App. (1894—1904), at pp. 215, 216.

(b) (1902), Ryde and Konstam's Rat. App. (1894—1904), 68; 66 J. P. 167.

(c) This decision was confirmed in *Kyffin v. Woolwich Union* (1903), 67 J. P. 100.

In *Peat v. Westminster Assessment Committee* (d), the appellant objected to the quinquennial list made in 1900, and contended that the assessment of his house should be reduced because he had taken a new lease (which had not yet been actually granted) at a reduced rent. The assessment committee promised to reconsider the assessment when the lease had been granted. The lease was eventually granted in November, 1901, but the assessment committee refused to insert the house in the supplemental list made in 1902. On appeal, the London quarter sessions ordered the house to be inserted in the supplemental list. Here again the decision may have been based on special grounds, viz., that the assessment committee by their promise to reconsider the assessment might have induced the appellant to abstain from appealing against the quinquennial list, and therefore were estopped from disputing his right to be put in a supplemental list.

In *Klaber v. Mayor, etc. of Westminster* (e), the premises in question had been, as a temporary arrangement, entered in the supplemental list made in 1902 at a reduced assessment, the premises being temporarily let to a tenant at 3*l.* a week. In January, 1903, they were let on lease at 400*l.* per annum, and were entered in the supplemental list made in May, 1903, at a higher figure. No other change of circumstances was suggested. The new tenant contended (1) that a new letting at an increased rent was not sufficient reason for entering the premises in the supplemental list made in 1903, and (2) that he could not be bound by any arrangement, to which he was not a party, made with the previous occupier. The quarter sessions, however, confirmed the assessment. It must be noticed that if the entry in the list of 1903 was irregular, because there had been no change of circumstances, the entry in the list of 1902 was equally irregular; and therefore the assessment previously entered in the quinquennial list of 1900 should have remained unaltered, if the strict letter of the law were to be followed.

Within what time the alteration must take place.—In order to warrant the insertion of a hereditament in a supplemental list, it must be shown that an “alteration” has taken place “during the preceding twelve months” (f). By s. 4 of the Valuation (Metropolis) Act, 1869, “the term ‘year’ means the twelve months commencing with the 6th of April and ending with the succeeding 5th of April; and words referring to a year refer to the same period.” It seems clear that the “twelve months” mentioned in the words above quoted from s. 46 of the same Act, must be taken to mean the “year” as above defined, and this view has been

(d) (1903), 67 J. P. 100.

(e) (1904), Ryde and Konstam's Rat. App. (1894—1904), 365; 68 J. P. 136.

(f) See the Valuation (Metropolis) Act, 1869, s. 46, Appendix II., *infra*.

generally acted upon in practice (*g*). The effect is that, where a supplemental list is made, the "alteration" takes place in one "year" (ending on April 5th), the list is made in the next "year," and comes into force at the commencement of the third "year" (*h*).

As to a provisional list there is a difficulty. By s. 47 of the Valuation (Metropolis) Act, 1869, "if in the course of any year the value of any hereditament is increased or reduced," the overseers may make a provisional list "containing the gross and rateable value as so increased or reduced of such hereditament." In *R. v. St. Mary, Bermondsey* (*i*), HAWKINS, J., appears to have held that a provisional list can only be made where the value is increased or reduced within the year in which the list is made. If carried out strictly, this decision would work considerable hardship, where the hereditament was partly destroyed by fire, say on April 5th, 1903; when it would be impossible for the overseers to make a provisional list in that "year," and the supplemental list made in 1903 would not come into force until April 6th, 1904.

Refusal of overseers to make a supplemental list.—The difficulties which arise in the case of a provisional list (*k*), do not apply where overseers refuse to make a supplemental list, or refuse to enter a particular hereditament in a supplemental list. By s. 11 of the Valuation (Metropolis) Act, 1869 (*l*), the ratepayer may object before the assessment committee on the ground that he is aggrieved "by reason of the omission of a matter" (*e.g.*, the valuation of his own property) from the supplemental list, "or by reason of such a valuation list as is required by this Act not having been transmitted by the overseers to the assessment committee." If the assessment committee disallow the objection, a right of appeal is given by s. 32 to the assessment sessions, now the London quarter sessions (*m*).

Summary of procedure in making provisional lists.—Provisional lists are peculiar to the metropolis, there being nothing to correspond to them in the machinery in operation outside the metropolis. The question, what are the conditions precedent to the making of a provisional list has been already considered (*n*);

(*g*) See *R. v. New River Co.* (1879), 4 Q. B. D. 309, at p. 311 (paras. 15 and 17 of case); *London and South Western Rail. Co. v. Lambeth*, Ryde's Rat. App. (1885—1890), 183, at p. 187; *Dudin v. St. Olave's Union*, *ibid.*, p. 202.

(*h*) See Valuation (Metropolis) Act, 1869, s. 43.

(*i*) (1884), 14 Q. B. D. 351, at p. 357. Note that the judgment appears to adopt the view that an appeal would lie against a provisional list: this view has since been held to be wrong: *vide infra*, p. 656.

(*k*) *Vide infra*, pp. 660—663.

(*l*) This section is applied to supplemental lists by s. 46 (3), (4).

(*m*) *Vide infra*, p. 670.

(*n*) *Supra*, pp. 648 *et seq.*

and it is proposed first to draw attention to the difference, in procedure and effect, between a provisional list and a supplemental or quinquennial list.

The procedure with regard to provisional lists is entirely contained in s. 47 of the Valuation (Metropolis) Act, 1869. The main points of difference are as follows : A provisional list may be made at any time in the course of any year, and none of the times (*o*) prescribed by s. 42 of the Valuation (Metropolis) Act, 1869, are applicable : as soon as it is approved by the assessment committee it affects the then current poor rate ; it continues in operation only until the first list (supplemental or other) which is subsequently made comes into force ; and “if when the next revision of the valuation list takes place the list as approved and altered on appeal (*p*) contains a smaller value” than that stated in the provisional list, the amount of rate or tax overpaid in consequence of the larger value having been stated in the provisional list is to be repaid or allowed (*q*). Again, an appeal lies to the special sessions or assessment sessions (now the London quarter sessions) (*r*) against a supplemental or quinquennial list (*s*) ; but though a provisional list is subject to revision by the assessment committee (*t*), no appeal lies from their decision thereon (*u*). In the case cited in the note, the court had to decide only whether an appeal lay to special sessions, but the reasoning is equally applicable to the right of appeal to the assessment sessions (now the London quarter sessions). The right of appeal against a supplemental or quinquennial list depends on s. 46 (4) of the Valuation (Metropolis) Act, 1869, under which those lists come into force “subject to the same conditions as the valuation list made in the first year after the passing of this Act.” These conditions include the ratepayer’s right of objection and appeal under ss. 11, 19, and 32. But there is nothing in s. 47 (which deals with the making of a provisional list) to correspond with the words above quoted from s. 46 (4). Moreover, by s. 47 (8) it is implied that there can be no appeal pending so as to delay the operation of the provisional list ; and the provision in s. 47 (10) for repayment in case of over-assessment is intended to prevent the want of a right of appeal from working injustice.

Rightly or wrongly, the view that no appeal lies against a provisional list, has been in practice acted upon ever since the passing of the Valuation (Metropolis) Act, 1869, by both the assessment sessions and the London quarter sessions.

(*o*) These times apply equally to quinquennial and to supplemental lists.

(*p*) These words apparently mean “if altered on appeal, as so altered.”

(*q*) The provisions as to repayment are discussed *infra*, pp. 659, 660.

(*r*) *Vide infra*, p. 670.

(*s*) Valuation (Metropolis) Act, 1869, ss. 19, 32, and 46 (3), (4).

(*t*) For the powers of the committee on such revision, *vide infra*, p. 657.

(*u*) *Fulham Union v. Wells* (1888), 20 Q. B. D. 749 ; 59 L. T. 103 ; 36 W. R.

Powers of assessment committee on revision of provisional list.—The Valuation (Metropolis) Act, 1869 (*x*), by s. 47 (3), (4), expressly provides that objections may be made before the assessment committee against a provisional list ; and by sub-s. (6), “The committee shall hear and determine on the objection in the same manner as if it were an objection to a valuation list [*i.e.*, a supplemental or quinquennial list], and may make such order as they think just.” It must be noticed that the section does not in terms make applicable to provisional lists all the powers of the assessment committee with regard to quinquennial or supplemental lists, and therefore it is not clear whether the committee have power to alter the valuation stated in a provisional list (where no objection is made to it), in the same way as they have power to alter a quinquennial or supplemental list (*y*). It is true that sub-s. (7) says that the committee shall return to the overseers a copy of the provisional list, “with any alteration made in it by the committee” ; but these words may refer to an alteration made in deciding on an objection, and do not *necessarily* imply that the committee have power to make an alteration where no objection has been made.

Period during which a provisional list is to operate.—By s. 47 (3) of the Valuation (Metropolis) Act, 1896, (*z*), on the receipt of the provisional list (from the overseers), the clerk of the assessment committee shall serve on the occupier (*a*) of any hereditament to which the list relates a copy of so much of the list as relates to that hereditament, together with a notice specifying the day before which objections may be made. Sub-sections (4)—(7) provide for the hearing of objections, and after these have been decided, or on the expiry of the time for making objections, the committee are to return a copy of the list (signed by their clerk) to the overseers. And, by s. 47 (8), a provisional list, signed by the clerk, “shall have operation from the date of the service by the clerk of the assessment committee of a copy of the list and notice on the occupier, and shall continue in force until the first list (supplemental or other) which is subsequently made comes into force.” So that when the list has been revised by the assessment committee, it will relate back, or “have operation” from an earlier date. This result renders it difficult to construe strictly s. 47 (9), which enacts that “upon a provisional list coming into operation the overseers shall make such entries in the rate book for the then current poor rate as will bring the same

(*x*) See Appendix II., *infra*.

(*y*) *Vide supra*, pp. 637, 638, and pp. 525—527.

(*z*) See Appendix II.

(*a*) This notice must apparently be served on the owner or lessee where he is liable to be assessed in the place of the occupier : see the Valuation (Metropolis) Amendment Act, 1884, s. 2, in Appendix II.

into conformity with such list, and shall also enter therein the date at which such list is to come into operation." It seems impossible to make any distinction between the date at which the list is to "come into operation," and the date from which it is to "have operation." But as the list will not be signed by the clerk of the assessment committee until fourteen days at least (*b*), or (if objections are made) possibly a much longer time has elapsed since the date from which it is to "have operation," it seems impossible to construe the opening words of s. 47 (9) as meaning "*immediately upon* a list coming into operation." If it be suggested that the overseers are to wait until the provisional list is signed by the committee, and then make the necessary alterations in the rate, a difficulty may arise where the provisional list shows a lower valuation than the list previously in force. For in the interval between the receipt of the list by the committee and the signing of it by their clerk, a rate may have been made, and a distress warrant may have been applied for. It may be doubted whether in such a case the magistrate could, by means of an adjournment, in effect refuse to grant a distress warrant until the assessment committee had signed the provisional list: for, in such matters (for some purposes at least), the magistrate acts ministerially and not judicially, the rate being good on the face of it (*c*). It seems, however, that the magistrate (if he doubted whether a distress warrant ought under the circumstances to issue) might state a case for the opinion of the King's Bench Division (*d*).

By s. 47 (8) of the Valuation (Metropolis) Act, 1869 (*e*), a provisional list "shall continue in force until the first list (supplemental or other) *which is subsequently made* comes into force." If a provisional list comes into force on May 1st, 1905, it will continue in force until April 6th, 1906, on which date the quinquennial list made in 1905, will come into force (*f*). This quinquennial list ought to be finally approved by the assessment committee before November 1st, 1905 (*g*). If this is done, and a provisional list is made in December, 1905, that provisional list will continue in force until April 6th, 1907, on which date the supplemental list made in 1906 will come into force. But if a provisional list is made in August, 1905, that is, after the quinquennial list has been signed by the overseers, and before it has been finally approved by the assessment committee, it is not very clear whether the quinquennial list must be regarded as "*subsequently made*"; and on this depends the question whether the

(*b*) See Valuation (Metropolis) Act, 1869, s. 47 (3).

(*c*) See *R. v. Handsley* (1881), 7 Q. B. D. 398; and pp. 616, 617, *supra*.

(*d*) See *R. v. Mayor of London* (1887), 57 L. T. 491; *Fourth City Mutual Building Society v. East Ham*, [1892] 1 Q. B. 661; *vide supra*, p. 624.

(*e*) See Appendix II., *infra*.

(*f*) See Valuation (Metropolis) Act, 1869, s. 43.

(*g*) See s. 42 (8).

provisional list will last till April 6th, 1906, or April 6th, 1907. In a sense, the quinquennial list is "made" when it is deposited by the overseers (*h*) ; but the list so "made" is inoperative unless it is approved by the assessment committee, who may alter every entry in the list. There is, therefore, some ground for contending that a valuation list is not completely "made" until it has been finally approved by the assessment committee.

The question whether a provisional list under such circumstances is in force, or not, is important for two reasons: (1) because it determines whether it is necessary to appeal against the quinquennial list in order to get that list altered ; (2) because even if the assessment committee agree with the ratepayer as to the basis of rating, that agreement does not bind the overseers, and the ratepayer is not protected (*i*). This latter difficulty is of less importance than it was formerly, because under the London Government Act, 1899, s. 11 (1), and s. 13 (*k*), the council of each metropolitan borough acts as the overseers of each parish in the borough, and where the whole of a union is in the borough appoints the assessment committee.

The duration of a provisional list has been considered at the London quarter sessions (*l*), but there has been no express decision on the points above referred to.

Effect of provisional list: repayment of excess.—The object of the statute in directing the making of provisional lists was no doubt to provide a speedier means of correcting valuations than is given by a supplemental or quinquennial list, which can only be made in April or May, and does not come into force until the following April (*m*). By s. 47 (9) of the Valuation (Metropolis) Act, 1869, the current poor rate is to be altered in conformity with the provisional list upon its coming into operation ; and by s. 47 (10), "a provisional list during the time that it is in force, shall be deemed to form part of the valuation list for the time being in force, and shall (so far as is necessary) be substituted for so much of that valuation list as relates to the same hereditament" ; rates (including the current poor rate) and taxes are to be based on the provisional list ; "but if, when the next revision of the valuation list takes place, the list as approved and altered on appeal (*n*) contains a smaller value for the hereditament comprised in a provisional list than the value stated in such provisional list,

(*h*) See ss. 6 and 42 (1).

(*i*) Cf. *R. v. Marsham* (1883), 50 L. T. 142, *supra*, p. 642.

(*k*) See Appendix II., *infra*.

(*l*) See *Taylor v. St. Olave's Union*, Ryde's Rat. App. (1886—1890), 117 ; *Dudin v. St. Olave's Union*, *ibid.*, p. 202.

(*m*) See ss. 6, 42 (1), and the definition of "year" in s. 4.

(*n*) It seems clear that this means, "if altered on appeal, as so altered," and that the provision as to repayment is not limited to cases where there has been an alteration on appeal.

the amount of rate or tax which has been overpaid in consequence of the larger value having been stated shall be repaid or allowed."

The provision for repayment is no doubt intended to prevent injustice from being caused by the non-existence of any right of appeal against a provisional list (*o*), but it is not clear that this object has been effected. For the scheme assumes that when the next supplemental list is made, the hereditament will exist, and will consist of the same buildings, in the same circumstances, as when the provisional list was made. If the hereditament is a temporary structure (such as a circus or exhibition) which is removed before the supplemental list is made, it will not appear in that list at all, and there will be nothing with which to compare the valuation in the provisional list. Again, suppose the rateable value of property (really worth 5,000*l.*) is wrongly put in a provisional list at 6,000*l.*: and suppose that by the time the next supplemental list is made the opening of a new bridge or street, or the completion of additional buildings on the premises, increases the true value to 6,000*l.*, and this value is rightly stated in the supplemental list (either on appeal or on objection before the assessment committee); then that list will not show "a smaller value for the hereditament comprised in the provisional list than the value stated in such provisional list," and the scheme for repayment in s. 47 (10) of the Valuation (Metropolis) Act, 1869, will not apply, although the ratepayer will have been paying rates on an assessment, which is too high by 1000*l.* In any event the scheme of s. 47 (10) provides no remedy for the hardship involved in having to pay rates (enforceable by distress, though wrongly imposed), and having to wait for a considerable period (possibly more than a year) before obtaining repayment.

Refusal of overseers to make provisional list.—By s. 47 (1) of the Valuation (Metropolis) Act, 1869 (*p*), if in the course of any year the value of any hereditament is increased or reduced in certain specified ways (*q*), "the overseers . . . may, and on the written requisition of the assessment committee or of any ratepayer of the union or of the surveyor of taxes . . . shall, send to the assessment committee a provisional list containing the gross and rateable value as so increased or reduced"; and by sub-s. (2), if the overseers make default for fourteen days, then "the assessment committee shall appoint a person to make such provisional list." The cases decided on these sub-sections are not very clear, but the effect appears to be as follows: the overseers have jurisdiction in the first instance to consider the question of

(*o*) *Vide supra*, p. 656.

(*p*) See Appendix II., *infra*.

(*q*) The question, what is a sufficient increase or reduction to warrant a provisional list, is considered, *supra*, pp. 648, 649.

fact whether the value of the hereditament has been increased or reduced ; and their decision on this question cannot be reviewed by the King's Bench Division on an application for a *mandamus* (*r*). If the overseers refuse to make a provisional list, and the applicant can make out a *prima facie* case of increase or reduction in value, the assessment committee *must* appoint some person to make a provisional list, though apparently the person so appointed (or the assessment committee on hearing objections against the list when made) may decide that the value has not in fact been increased or reduced (*s*). And it seems that the decision on this question of fact cannot be reviewed by the King's Bench Division (*t*), but if the committee decide that as a matter of law the increase or reduction in value is not sufficient to warrant the making of a provisional list, this decision can be reviewed by the King's Bench Division (*u*).

Where the overseers decide that the increase or reduction in value, which they find to exist in fact, does not, as a matter of law, warrant the making of a provisional list, the proper course appears to be to wait till the assessment committee have either appointed or refused to appoint a person to make a provisional list. If the committee wrongly refuse, a *mandamus* against *them* can be obtained ; whether it could also be obtained against the overseers is not absolutely clear (*x*).

In one case (*y*), where the overseers refused to make a provisional list showing a reduced value, an attempt was made to proceed by way of injunction, restraining the overseers from recovering rates on the higher assessment. Save that the Court of Appeal held that such proceedings could not be commenced without the issue of a writ, no decision was given, as the parties settled the case.

Apart from the question whether proceedings by way of injunction could be maintained, the result appears to be that if the overseers and the assessment committee decide as a fact that the value of a hereditament has not in the course of the year been increased or reduced, a ratepayer has no means of enforcing his claim to have his property inserted in a provisional list, but must wait

(*r*) *R. v. St. Mary, Bermondsey* (1884), 14 Q. B. D. 351. It must be noticed that in this case HAWKINS, J. (14 Q. B. D., at p. 356), assumed that an appeal lay against a provisional list. This assumption is now held to be wrong : see *Fulham Union v. Wells* (1888), 20 Q. B. D. 749, *supra*, p. 656.

(*s*) *R. v. St. Mary, Islington* (1887), 19 Q. B. D. 529 ; Ryde's Rat. App. (1886—1890), 272.

(*t*) This seems to follow from *R. v. St. Mary, Bermondsey, supra*.

(*u*) *R. v. St. Mary, Islington, supra*.

(*x*) In *R. v. St. Mary, Bermondsey, supra*, the ground for refusing the *mandamus* was not that *mandamus* was not the most convenient remedy.

(*y*) *Surrey Commercial Dock Co. v. St. Mary, Rotherhithe*, Ryde's Rat. App. (1886—1890), 29 n.

until the next supplemental or quinquennial list is made, when, if the property is not inserted in the list at a reduced value, he can appeal against the list to quarter sessions.

In order to avoid the responsibility of causing an application to be made for a *mandamus*, in one or two instances overseers have adopted the plan of sending in as a provisional list a mere copy of the list already in force. Such a practice cannot logically be supported; for a provisional list can only be made in the circumstances specified in the introductory clause of s. 47 of the Valuation (Metropolis) Act, 1869, viz., "If in the course of any year the value of any hereditament is increased . . . or reduced;" and a provisional list, which itself negatives the conditions on which alone such a list can legally be made, is on the face of it a nullity (z).

Means of disputing validity of provisional list.—We have already seen that there is no appeal to quarter or special sessions against a provisional list (a). It remains to be considered whether there are any other means of disputing a rate based on a provisional list. In this paragraph we are of course dealing with objections to a rate, which are founded on the alleged invalidity of the provisional list on which it is based. Objections to a rate on the ground of the invalidity of the rate itself (*e.g.*, on the ground that the wrong person is rated, or that the property is exempt) can undoubtedly be raised by way of appeal (b).

It seems clear that if the assessment committee find as a fact that the value of a hereditament has been increased in the course of the year, and put the hereditament in a provisional list, their decision on this question of the fact is made final by s. 47 of the Valuation (Metropolis) Act, 1869. It can hardly be argued that the Act which in the case of a provisional list withholds the right of appeal to the sessions, given in the case of other lists, intends that the question of increase in value should be liable to be raised by any proceedings in the High Court.

A more difficult question would arise if there were any irregularity in the proceedings connected with the making of a provisional list, which would afford ground for contending that the list was a nullity; *e.g.*, if the assessment committee approved the list without hearing objections thereto. By s. 47 (10) of the Valuation (Metropolis) Act, 1869 (c), "A provisional list during the time that it is in force shall be deemed to form part of the valuation list for the time being in force." And by s. 45, "The

(z) See the judgment of GROVE, J., in *R. v. St. Mary, Bermondsey* (1884), 14 Q. B. D. 351, at p. 353.

(a) *Fulham Union v. Wells* (1888), 20 Q. B. D. 749, *supra*, p. 656.

(b) *Vide supra*, p. 646; see also pp. 616—623 as to the defences which can be raised on the hearing of the summons for a distress warrant to enforce the rate.

(c) See Appendix II., *infra*.

valuation list for the time being in force shall be deemed to have been duly made" (*d*). It is not at all clear that these sections, read together, prevent a ratepayer from saying that a provisional list is not in force because it is not duly made. But this contention must be raised (if at all) in one of three ways (*e*): (1) by an action in the High Court claiming an injunction against the overseers, restraining them from levying rates based on the provisional list (*f*) ; (2) by an appeal to quarter sessions against each rate based on the provisional list on the ground that the quinquennial (or last supplemental) list is made conclusive evidence of value by s. 45 of the Valuation (Metropolis) Act, 1869, and that (the provisional list being a nullity) the rate does not follow the valuation list in force ; or (3) by disputing the validity of the rate on the same grounds, when an application is made for a distress warrant to enforce it.

It cannot be said with confidence that any of these methods would be successful. Possibly all three methods might be adopted simultaneously, to insure the adoption of the right remedy, if there be one.

Alteration of rates without a provisional list.—It may be convenient here to point out the other methods available for altering a rate, without making a provisional list. The main (if not the only) object of a provisional list—as of all other valuation lists—is to fix or alter the valuation of property. There may, however, be changes in the occupation of property, which do not affect its value, and which can be dealt with by altering the rate without touching the list.

Where one tenant goes out, and another comes in, in the middle of the period for which a rate is made (the value remaining unaltered), or where property is occupied for only part of that period, and is unoccupied for the remainder, the case is dealt with, both inside and outside the metropolis, under the Poor Rate Assessment and Collection Act, 1869, s. 16 (*g*) by making an entry in the rate book, without altering the valuation list.

There are two provisions for amending a rate, which are peculiar to the metropolis. By s. 71 of the Valuation (Metropolis) Act, 1869 (*h*), a person aggrieved by any clerical or arithmetical error

(*d*) See the remarks on this section, *supra*, pp. 642—644.

(*e*) Apparently it would be wrong to seek to remove the provisional list by *certiorari*: see *R. v. Watermen's Co.*, [1897] 1 Q. B. 659 ; *R. v. Sharman*, [1898] 1 Q. B. 578 ; but *cf. R. v. Bowman*, [1898] 1 Q. B. 663, at p. 667 ; *R. v. Chorlton Union* (1872), L. R. 8 Q. B. 5.

(*f*) An action was brought in this form in somewhat similar circumstances, in *Surrey Commercial Dock Co. v. St. Mary, Rotherhithe*, Ryde's Rat. App. (1886—1890), 29 n, but no decision was given, as the parties agreed to a compromise.

(*g*) 32 & 33 Vict. c. 41, as amended by 45 & 46 Vict. c. 20 ; *vide supra*, pp. 54, 55. Both Acts are set out in Appendix II.

(*h*) See Appendix II., *infra*.

in a rate may apply to have it amended by two justices or a police magistrate. And by s. 72, whenever the name of any person liable to be rated at the time the rate is made, is omitted from any rate, or if any person is therein described by a wrong name, the overseers (on applying to two justices or a police magistrate), may have the name inserted, or corrected ; but the person whose name is so inserted or corrected may appeal to quarter sessions in like manner as he might have appealed against the rate (*i*). It has been held (*k*) that an order for the insertion or correction of a name under s. 72 may be made notwithstanding the expiration of the period for which the rate was made. It is submitted that an order under s. 71 correcting a clerical or arithmetical error in a rate may also be made after the expiration of the period for which the rate was made. The same reasoning applies alike to ss. 71 and 72 ; and before the passing of the Valuation (Metropolis) Act, 1869, the quarter sessions (who were the only authority having power to amend a rate) had power to amend (and in practice frequently exercised that power) long after the expiry of the period for which the rate was made, and there is nothing in s. 71 or s. 72 restricting the power to amend within a shorter period than that which was open to quarter sessions.

(*i*) As to appeals against a rate in the metropolis, *vide supra*, p. 646.

(*k*) *Mayor, etc. of Westminster v. Edgcome* (1901), Ryde and Konstam's Rat. App. (1894—1904), 257.

CHAPTER XXXIV.

APPEAL AGAINST A VALUATION LIST.

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Against what list, and to what court an appeal lies.—Appeals may be brought against quinquennial lists, and also (as to hereditaments which are or which ought to be included therein) against supplemental lists (*a*) ; but there is no right of appeal against a provisional list (*b*).

In certain cases, a right of appeal is given from the decision of the assessment committee to special sessions (*c*), and from special sessions to the assessment sessions, now the county of London

(*a*) See Valuation (Metropolis) Act, 1869, ss. 19, 32, 46 (3), (4), in Appendix II.

(*b*) *Vide supra*, p. 656.

(*c*) See s. 19, in Appendix II.

quarter sessions (*d*) ; and there is also a right of appeal, in all cases in which there is any right of appeal at all, direct to the London quarter sessions from the decision of the assessment committee (*e*). In no case is it necessary, and in only a limited number of cases is it even optional, for an appellant to go first to special sessions.

By s. 19 of the Valuation (Metropolis) Act, 1869, it is enacted that “any ratepayer [amongst other persons], so far as respects the valuation list of . . . any parish in the petty sessional division, may, if he” feels “aggrieved by any decision of the assessment committee on an objection made with respect to the unfairness or incorrectness of the valuation of any hereditament included in such list, but not otherwise, appeal against such decision to the special sessions” (*f*). Consequently, a ratepayer cannot appeal to special sessions on such grounds as the following : that some hereditament has been wrongly omitted from or inserted in the valuation list ; that the appellant is not an occupier of the land for which he is rated ; that he is specially exempt. And by s. 20 of the same Act, “The justices in special sessions under this Act shall not hear any appeal touching any matter with respect to which notice of appeal to the general assessment sessions [now the London quarter sessions] has been served in manner prescribed by this Act, and shall not hear any appeal touching any part or alter any part of the valuation list except the part relating to the value of an hereditament” ; and a decision of special sessions is not of itself to affect the totals of the gross and rateable values entered in the valuation list.

The option of appealing against a valuation list either to special sessions or quarter sessions within the metropolis is closely analogous to the option of appealing against a rate outside the metropolis either to special sessions or quarter sessions ; and the facts to be considered in exercising the option (where it exists) appear to be very similar in both cases (*g*). It may here be noted that ss. 6 and 7 of the Parochial Assessments Act, 1836, which give a right of appeal *against a rate* are repealed as to the metropolis (*h*).

Time for appealing to special sessions, and conditions precedent.—In every petty sessional division in the metropolis the justices for that division must hold a special sessions for hearing appeals under the Valuation (Metropolis) Act, 1869, at

(*d*) *Vide infra*, p. 670.

(*e*) See s. 32.

(*f*) The term “ratepayer” includes an owner or lessee who pays, or is liable to pay, rates instead of the occupier : see s. 2 of the Valuation (Metropolis) Amendment Act, 1884, in Appendix II., *infra*.

(*g*) *Vide supra*, p. 539.

(*h*) Valuation (Metropolis) Act, 1869, s. 77.

any time after November 30th, which will enable them to determine all appeals before the ensuing January 1st (*i*). It appears to be obligatory upon the justices to hold the special sessions within the prescribed time if they can do so ; but if they cannot do so, they apparently have jurisdiction to determine appeals after the time has expired, if the appellant has given notice of appeal in due time (*k*).

Notice in writing of an appeal to special sessions, specifying the correction desired, must be given on or before November 21st, in the year in which the list is made (*l*) to the persons specified in s. 33 of the Valuation (Metropolis) Act, 1869 ; and the notice may be given in the manner specified in s. 65. Within seven days after giving notice of appeal every appellant, other than an assessment committee, overseers, or a surveyor of taxes, must either enter into recognizances, or make a deposit, as a security for costs (*m*).

Inasmuch as an appeal to special sessions can only be brought by persons "aggrieved by any decision of the assessment committee on an objection made with respect to the unfairness or incorrectness of the valuation of any hereditament included in the list" (*n*), it is clear that the making of an objection, and the getting of a decision, are conditions precedent. The section here quoted does not speak of the objection to the committee as being "made *before them*" : so that it may perhaps be suggested that the making of an objection in writing is sufficient, without any appearance before the committee ; but, on the other hand, other sections of the Act seem to assume that all objections must "be heard," and must be made "before the committee" (*o*), and no section expressly permits the making of an objection in writing, though notice of that objection must, of course, be given in writing. This subject is more fully discussed below (*p*) in dealing with the conditions precedent to an appeal to quarter sessions, but it must be noticed that s. 32, which gives the right of appeal to quarter sessions, speaks of a person "aggrieved by any decision of the assessment committee, on an objection made *before them*." The insertion of the last two words here quoted, which are not found in s. 19, which gives the right of appeal to special sessions, may perhaps be held to make a difference.

(*i*) Valuation (Metropolis) Act, 1869, ss. 18, 42 (10). By s. 22, public notice of the sittings must be given.

(*k*) *R. v. London J.J.*, [1893] 2 Q. B. 476 ; *Ryde's Rat. App.* (1891—1893), 360, *supra*, p. 629.

(*l*) Valuation (Metropolis) Act, 1869, s. 42 (9) : see Appendix II.

(*m*) See rr. 1, 4, of the Orders of the London Quarter Sessions, in Appendix II.

(*n*) Valuation (Metropolis) Act, 1869, s. 19.

(*o*) See s. 11, and s. 42 (5)—(7) ; see also Union Assessment Committee Act, 1862, ss. 19—21, which are incorporated by s. 7 of the Valuation (Metropolis) Act, 1869.

(*p*) *Vide infra*, p. 675.

Powers of special sessions : amendment of notice of appeal : costs.—By s. 21 of the Valuation (Metropolis) Act, 1869 (*q*), the justices in special sessions have with respect to the attendance and examination of witnesses, the taking of evidence, the keeping order in court, the enforcing their orders, and all matters necessary for the execution of their duties under the Act, the same powers and jurisdiction as if they were assembled in petty sessions (*r*). And by s. 34, they must hear and determine all appeals in open court in such order as they may from time to time appoint ; and “they may confirm or alter the valuation list, *so far as it is questioned by the appeal*, in such manner as they think just, *but shall not make any alteration in contravention of this Act.*” The words here printed in *italics* must be read with reference to ss. 19, 20, above quoted (*s*). They also prevent any alteration of the list which would involve a greater deduction from the gross to arrive at the rateable value than is permitted by s. 52, and the third schedule to the Valuation (Metropolis) Act, 1869.

Adjournments may be made to any day not later than December 31st (*t*).

If from accident or mistake due notice of appeal has not been given, or if an additional notice of appeal appears to be required, the special sessions may, if they think it just, order notice of appeal to be given (*u*). It is clear that this section must be read subject to s. 19, which limits the grounds on which an appeal can be taken to special sessions ; and that the special sessions could not permit a notice of appeal to be given, based on a ground of appeal into which they had no jurisdiction to inquire.

The costs of an appeal to special sessions are in the discretion of the sessions, and shall be awarded by them to be paid by such parties to the appeal, and in such proportions as they think just (*v*).

Statement of a case for the King's Bench Division.—For reasons similar to those already given in dealing with appeals to special sessions against a rate outside the metropolis, it is submitted that, on appeals against a valuation list within the metropolis, special sessions have no power to state a case for the opinion of the King's Bench Division ; and that, if any point of law arises, on which it is desired to appeal to the King's Bench, the course suggested above should be adopted (*y*).

(*q*) See Appendix II., *infra*.

(*r*) It is submitted that they are not a “court of summary jurisdiction”: *vide supra*, p. 544.

(*s*) *Supra*, p. 666.

(*t*) See ss. 21, 34, 42 (10), in Appendix II.

(*u*) See s. 34.

(*v*) See s. 39. See also p. 689, *infra*, as to the effect of this section. As to the recovery of costs, *vide infra*, p. 692.

(*y*) *Vide supra*, pp. 542, 543.

Appeal from special sessions to quarter sessions.—By s. 32 of the Valuation (Metropolis) Act, 1869, “Any ratepayer and any surveyor of taxes, and any overseer, with the consent of the vestry of his parish (*z*), who may feel aggrieved . . . by any decision of special sessions, whether he was a party or not, may appeal against such decision to the assessment sessions” (now the London quarter sessions) (*a*).

It may perhaps be suggested that the procedure is now regulated by s. 31 of the Summary Jurisdiction Act, 1879; but it is submitted that this is not so, for reasons similar to those given above, in dealing with appeals from special sessions outside the metropolis (*b*). It may also be noticed that down to 1888, an appeal from special sessions under the Valuation (Metropolis) Act, 1869, could not possibly be regulated by the Summary Jurisdiction Act, 1879, s. 31, because the appeal lay to the specially constituted court of assessment sessions and not to quarter sessions. It would be a somewhat singular result if the substitution of the London quarter sessions for the assessment sessions were to render the Summary Jurisdiction Act, 1879, applicable.

Assuming that the writer is right in his view that the appeal from special sessions is regulated by the Valuation (Metropolis) Act, 1869, a summary of the procedure will be found below (*c*); for it is the same as in the case of an appeal to quarter sessions direct from a decision of the assessment committee.

A person who has appealed to the special sessions, and whose appeal has been heard, cannot afterwards come before the quarter sessions by way of appeal from the decision of the assessment committee, but must appeal from the decision of the special sessions (*d*). And if the special sessions wrongly refuse to hear an appeal, it seems that the proper course is to apply to the King's Bench Division for a *mandamus*, directing the special sessions to hear it, and not to appeal from their refusal to the quarter sessions: for before there can be an appeal, there must be some decision from which to appeal (*e*). But it appears that this rule does not apply where the refusal of the special sessions is well founded, and that in such a case the appellant can appeal as from the decision of the assessment committee, the appeal to the special sessions being treated as a nullity (*f*).

(*z*) The powers of the overseers and vestry are now vested in the borough councils created by the London Government Act, 1899: see ss. 4, 11, 33 (1), in Appendix II.

(*a*) *Vide infra*, p. 670.

(*b*) *Vide supra*, pp. 543—545.

(*c*) *Vide infra*, pp. 679—692.

(*d*) *Bellamy v. St. Olave's Union* (1885), Ryde's Met. Rat. App. 401; a decision of the assessment sessions.

(*e*) *Hayes v. Holborn Union*, Ryde's Rat. App. (1886—1890), 199; a decision of the assessment sessions; but see the note, *ibid.*, p. 201.

(*f*) This sentence is perhaps in conflict with *Hayes v. Holborn Union*, *supra*.

It may be noticed that s. 32 of the Valuation (Metropolis) Act, 1869 (*g*), does not give an assessment committee any right of appeal from special sessions : but this is not now of much consequence, as the section gives a right of appeal to overseers, and under the London Government Act, 1899 (*h*), the council of each metropolitan borough are made the overseers of every parish within the borough, and (where the whole of a union is within the borough) also appoint the assessment committee.

Assessment sessions and quarter sessions.—The court of general assessment sessions was created by the Valuation (Metropolis) Act, 1869, s. 23 ; and by s. 24, consisted of the assistant judge of the Middlesex sessions, and two justices for each of the counties of Middlesex, Surrey, and Kent, and for the city of London ; and the jurisdiction of the court extended to the “metropolis,” as defined by ss. 3 and 4 of the Act (*i*).

But now by the Local Government Act, 1888, s. 42 (10), it is enacted as follows :

“The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area. Upon the hearing of any appeals in relation to property in the city of London, such two members of the court of quarter sessions of the city of London as may be appointed by that court for the purpose, shall be entitled to attend and sit as members of the quarter sessions for the county of London.”

The introduction of the last clause in this sub-section is brought about thus : the assessment sessions had jurisdiction over the whole of the “metropolis,” including the city of London ; the administrative county of London includes, but the county of London excludes, the city of London (*k*). The quarter sessions for the county of London consist of justices who (as such) have no jurisdiction within the city for other purposes ; but for the purposes of appeals under the Valuation (Metropolis) Act, 1869, they will have jurisdiction over appeals relating to property in the city. The effect of the last clause of the sub-section above set out is to make the constitution of the county of London quarter sessions, when hearing such appeals, similar to that of the assessment sessions, although there appears to be no limitation of the number of county justices who are entitled to attend on the hearing of such appeals.

It seems clear that, although the two justices for the city of London are “entitled to attend and sit” on the hearing of an

(*g*) *Vide supra*, p. 669.

(*h*) See s. 11 (1), and s. 13, in Appendix II.

(*i*) As to the effect of this definition, *vide supra*, p. 513.

(*k*) See the Local Government Act, 1888, s. 40 (1), (2).

appeal relating to property in the city, their attendance is not necessary in order to give the London quarter sessions jurisdiction over such an appeal (*l*). In very rare instances, the court has sat in the city of London for the hearing of such an appeal, but it is believed that many have been heard without the presence of a justice for the city.

By s. 26 of the Valuation (Metropolis) Act, 1869 (*m*), the powers and jurisdiction of the assessment sessions were made similar to those of quarter sessions, subject to the special provisions of the Act of 1869. No difficulty is created by the transfer from the assessment sessions to the London quarter sessions in those cases where the enactments relating to the two courts are consistent ; but it is not easy to determine the effect of that transfer where the enactments are inconsistent. It would no doubt be safer to assume that the London quarter sessions can exercise, with regard to appeals under the Valuation (Metropolis) Act, 1869, that jurisdiction only, subject to the same conditions and restrictions, which was exercised by the assessment sessions. The introductory words of s. 42 (10) of the Local Government Act, 1888, cited above, must not, however, be forgotten ; and it may be suggested that the effect of the section is to substitute the London quarter sessions, as constituted by the Act of 1888, for the assessment sessions, as constituted by the Act of 1869, in such a way that all provisions of the earlier Act which relate to the constitution of the court deciding appeals thereunder are repealed, wherever they are inconsistent with the Act of 1888 : whereas all provisions relating to jurisdiction over those appeals remain in force.

Chairman and quorum of court.—By s. 26 of the Valuation (Metropolis) Act, 1869, the justices in assessment sessions might from time to time appoint one of their own number to act as chairman, who should have a second or casting vote, and they might from time to time determine on their quorum so that it was not less than three.

But by s. 42 of the Local Government Act, 1888 (*o*), a paid chairman and deputy chairman of the London quarter sessions may be appointed by the Crown, and the court may be held before such chairman or deputy chairman alone. And by s. 40 (2) of the same Act, “subject to the provisions of this Act, all enactments, laws, and usages with respect to . . . justices, and quarter sessions shall, so far as circumstances admit, apply to the county

(*l*) See *British Equitable Assurance Co. v. City of London Union*, Ryde's Rat. App. (1886—1890), 229, where the practice relating to such appeals was considered.

(*m*) See Appendix II., *infra*.

(*o*) See Appendix II. The Quarter Sessions (London) Act, 1896 (59 & 60 Vict. c. 55), which provides for pensions for the chairman and deputy chairman, and for the appointment of deputies, does not affect the jurisdiction of the court.

of London." It is by no means clear that a chairman or deputy chairman appointed under s. 42 of the Local Government Act, 1888, has the right to a casting vote, which was given to the chairman of the assessment sessions elected under the Valuation (Metropolis) Act, 1869. Apart from any statutory provision, a chairman of quarter sessions has no casting vote (*p*). Nor, on the other hand, is it clear that the limitation as to the quorum of the assessment sessions applies to the London quarter sessions. Apart from statute, quarter sessions may be held before two justices (*q*), but apparently not before one. On one occasion the assessment sessions refused to hear an appeal, even with the consent of the parties, when only two justices were present (*r*). It would be safest to assume that the chairman has no casting vote, and that the quorum of the court for hearing appeals under the Valuation (Metropolis) Act, 1869, may not be less than three. It is submitted that the true view is that the provisions of the Act of 1869, both as to the quorum of the court and the casting vote of the chairman, are swept away by the Local Government Act, 1888.

Under the Quarter Sessions (London) Act, 1896 (*s*), s. 2, in case the permanent chairman or deputy chairman is absent by reason of sickness or other unavoidable cause, or is absent on such other occasion as may be allowed, a Secretary of State may appoint a barrister or barristers to act. So far as the hearing of rating appeals is concerned, this power has not hitherto been exercised. When it is exercised, the deputy will apparently possess the same jurisdiction as the person in whose stead he is appointed.

Time and place for holding quarter sessions.—By s. 26 of the Valuation (Metropolis) Act, 1869, the assessment sessions might adjourn from time to time as might be necessary for the performance of their duties under the Act, and (for the purpose of giving judgment only) from place to place in the metropolis. And by s. 42 (13) they might hold the assessment sessions at any time after February 1st in the "year" (*t*) in which the list was made, which would enable them to determine all the appeals (except where a valuation list or valuation was ordered) before the ensuing March 31st. These provisions as to time apply to the London quarter sessions, and the effect appears to be that they are binding on the sessions, so that they must hear all appeals within the prescribed time if it is possible to do so; but that, if it is not possible, they have jurisdiction to hear an appeal after the

(*p*) *R. v. Fladbury* (1839), 10 A. & E. 706.

(*q*) *R. v. Carmarthen JJ.* (1821), 4 B. & Ald. 291, at p. 293.

(*r*) *Mayor, etc. of London v. City of London Union*, Ryde's Rat. App. (1886—1890), 130.

(*) 59 & 60 Vict. c. 55.

(*t*) The "year" begins on April 6th, and ends on April 5th: see s. 4 of the Valuation (Metropolis) Act, 1869, in Appendix II. See also as to adjournments, s. 34.

prescribed time has expired, where the appellant has duly given all necessary notices and entered his appeal within the prescribed time (*u*).

By s. 29 of the Valuation (Metropolis) Act, 1869, the assessment sessions were required from time to time to appoint the place where the appeals relating to each parish in the metropolis were to be heard, and might, if they thought fit, divide the metropolis into districts for the purposes of appeals, and appoint one or more places for each district. In practice all appeals are now heard at the Sessions House at Clerkenwell (*x*). By s. 42 (7) of the Local Government Act, 1888, the London County Council may make schemes regulating the holding of quarter sessions in London (*y*).

Who may appeal, and on what grounds.—The right of appeal against a valuation list to quarter sessions depends on s. 32 of the Valuation (Metropolis) Act, 1869, which enacts that—

“Any ratepayer and any surveyor of taxes, and any overseer, with the consent of the vestry of his parish (*z*), who may feel aggrieved by any decision of the assessment committee, on an objection made before them to which he was a party, or by any decision of special sessions, whether he was a party or not, may appeal against such decision to the assessment sessions” [now the London quarter sessions].

The section also gives a right of appeal against the total gross and rateable values appearing in the valuation list, which will be considered hereafter (*a*).

By s. 4 of the Valuation (Metropolis) Act, 1869, the term “ratepayer” means every person who is liable to any rate or tax in respect of property entered in any valuation list. And by s. 2 of the Valuation (Metropolis) Amendment Act, 1884 (*b*), where the owner or lessee of any hereditament is liable to be assessed in place of the occupier or tenant, *or does in fact pay* any rate or tax in his place under any contract or arrangement with him, such

(*u*) *R. v. London JJ. and London County Council*, [1893] 2 Q. B. 476; *Ryde's Rat. App.* (1891—1893), 360: *vide supra*, p. 629. The decision of the Court of Appeal on the question of time, was unaffected by the decision of the House of Lords, which was based upon another ground: see [1894] A. C. 600.

(*x*) The London quarter sessions in 1890 heard an appeal relating to property in the city, at the Guildhall: see *British Equitable Insurance Co. v. City of London Union*, *Ryde's Rat. App.* (1886—1890), 229.

(*y*) A scheme will be found in the “*Gazette*” for March 29th, 1892: see Statutory Rules and Orders, 1892, p. 587.

(*z*) The powers of the overseers and vestry are now vested in the borough councils created by the London Government Act, 1899: see ss. 3, 4, 11 and 33 (1) in Appendix II.

(*a*) *Vide infra*, p. 677.

(*b*) See Appendix II. This section meets the decision in *Mutual Tontine Westminster Chambers Association v. St. Margaret and St. John, Westminster* (1881), *Ryde's Met. Rat. App.* 247, that owners who did not compound were not entitled to appeal.

owner or lessee is to be deemed the "ratepayer" within the Valuation (Metropolis) Act, 1869, s. 32, which is quoted above. By s. 13 of the Poor Rate Assessment and Collection Act, 1869 (*c*), the right of appeal had been given to the owner of a hereditament for the rates of which he had become liable.

Under s. 3 of the Valuation (Metropolis) Amendment Act, 1884, any occupier, owner, or lessee may include in one appeal several separately assessed hereditaments comprised in one valuation list.

It has been suggested that, as the valuation list is not conclusive of the question who is the occupier of a particular hereditament (*d*), an appeal will not lie against the valuation list on the ground that the appellant is not the occupier. It is submitted that this is not so, and that an appeal to quarter sessions will lie on any ground on which objection to the valuation list may be made before the assessment committee. The language of s. 32 of the Valuation (Metropolis) Act, 1869, is quite general: "Any ratepayer . . . who may feel aggrieved *by any decision of the assessment committee*, on an objection made before them to which he was a party . . . may appeal against such decision"; and objections may be made before the committee by persons aggrieved on the ground of the "incorrectness" of any matter in the valuation list. Again, s. 20 (*e*), which prohibits the special sessions from hearing any appeal "touching any part . . . of the valuation list except the part relating to the value of an hereditament," implies that the quarter sessions (who are not fettered by any such prohibition) may hear appeals touching other parts of the valuation list. In practice many appeals have been heard which have been brought on grounds other than over-assessment: as, for example, on the ground that the appellant was specially exempt by statute or otherwise (*f*), or that some person other than the appellant was the occupier (*g*), or that the appellant had an easement only and no occupation (*h*), or that he had no beneficial occupation (*i*), or

(*c*) See Appendix II.; and see also the definition of "owner" in s. 20 of that Act.

(*d*) *Vide supra*, p. 646.

(*e*) See Appendix II., *infra*.

(*f*) *Geological Society v. Strand Union* (1871), Ryde's Met. Rat. App. 24; *Charrington v. Mile End Old Town*, Ryde's Rat. App. (1891—1893), 14; *Canton v. Holborn Union*, *ibid.*, p. 30; *Pearson v. Holborn Union*, *ibid.*, p. 303; *supra*, p. 97; *Mayor, etc. of London v. City of London Union*, Ryde's Rat. App. (1886—1890), 130; *supra*, p. 97.

(*g*) *London, Brighton and South Coast Rail. Co. v. Stepney Union* (1871), Ryde's Met. Rat. App. 48; *London and North Western Rail. Co. v. Poplar Union* (1881), *ibid.*, 275; *Rickett Smith & Co. v. Poplar Union*, Ryde's Rat. App. (1886—1890), 150; *Burton v. St. Giles-in-the-Fields and St. George's, Bloomsbury* (1899), Ryde & Konstam's Rat. App. (1894—1904), 27.

(*h*) *Willing v. St. Pancras* (1877), Ryde's Met. Rat. App. 120, 188; 2 Q. B. D. 581; *supra*, p. 67.

(*i*) *London County Council v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1886—1890), 220; *London County Council v. Greenwich Union*, Ryde's Rat. App. (1891—1893), 98.

that he was rated for property (such as payments in lieu of tithes) which were not rateable (*k*).

But although an appeal *may* be brought against a valuation list on the grounds just mentioned, it seems clear that, as to most (if not all) of them, he is not bound to appeal against the list, but may wait until a rate is made, and then appeal against that (*l*) ; and if the appellant is not in occupation at all, he need not appeal against the list or the rate, but may take the point on the hearing of an application to enforce the rate (*n*).

The conditions precedent to an appeal.—In the following remarks, it is proposed to exclude from consideration appeals from special sessions and appeals against totals (*n*), and to consider the more common form of appeal relating to a particular hereditament direct to quarter sessions.

The cases which decide that notice of objection before the assessment committee (under s. 1 of the Union Assessment Committee Amendment Act, 1864), is a condition precedent to an appeal against a rate (*o*) are not in point, because the section referred to is repealed as to the metropolis by s. 77 of the Valuation (Metropolis) Act, 1869.

But as by s. 32 of the same Act the right of appeal (in the cases with which we are now dealing) is given only to a person who is “aggrieved by any decision of the assessment committee, on an objection made before them to which he was a party,” it is clear that the making of an objection, and a decision thereon, are conditions precedent to the right of appeal (*p*). But in a case (*q*) in which the objector, after giving notice of objection, failed (owing to illness) to attend the meeting of the assessment committee to support his objection, it was held by the London quarter sessions that he was entitled to appeal to quarter sessions, and that (on the facts of that case) there had been a waiver.

In *R. v. London J.J.* (*r*), where the appellants (the East London Waterworks Co.) gave notice of objection to the rateable

(*k*) *Esdaile v. City of London Union*, Ryde's Rat. App. (1886—1890), 105 ; *supra*, pp. 447, 448.

(*l*) *Vide supra*, p. 646 ; and see especially *London and India Docks v. Woolwich*, [1902] 1 K. B. 750 ; Ryde & Konstam's Rat. App. (1894—1904), 260 ; *supra*, p. 647.

(*m*) *Vide supra*, p. 620.

(*n*) As to the latter, *vide infra*, p. 677.

(*o*) *Vide supra*, pp. 555—559.

(*p*) *Woodwell v. St. Saviour's Union*, Ryde's Rat. App. (1891—1893), 97. In *Farrer v. St. Giles-in-the-Fields* (1871), Ryde's Met. Rat. App. 34, an appeal was heard by consent, under special circumstances, where there had been no objection before the assessment committee.

(*q*) *Grundy v. Lewisham Union* (1901), Ryde & Konstam's Rat. App. (1894—1904), 49.

(*r*) [1897] 1 Q. B. 433 : this decision seems to overrule the decision of the assessment sessions in *Bates v. St. Mary, Newington* (1876), Ryde's Met. Rat. App. 152.

value of their property, without mentioning the gross, and the overseers did not consent to the hearing of an objection to the gross, it was held by the Queen's Bench Division that the committee could not hear objections to the gross value, and that on appeal to quarter sessions the appellants could only appeal in respect of the rateable value, because there was no "decision of the assessment committee" as to the gross value, from which an appeal could be brought; and that, even if the committee had entertained the objection as to the gross value, without the consent of the overseers, which was required by s. 19 of the Union Assessment Committee Act, 1862 (*s*), that decision would have been given without jurisdiction, and would not have been appealable. In *Mayor, etc. of London v. St. Saviour's Union* (*t*), the London quarter sessions refused to allow the appellants on the hearing of the appeal to raise a point (*viz.*, the insufficiency of the deductions from the gross value) which had not been raised on the hearing of the objection before the assessment committee (*u*).

The assessment sessions had to consider the question, what amounts to making an objection before the assessment committee, in *Hyam v. St. Pancras* (*x*), where the appellant merely asked for an adjournment, but the committee said they had made up their minds, and the sessions held that this amounted to a decision against which the appellant was entitled to appeal. If notice of objection is given too late, but the committee in fact hear the objection, the objector can appeal (*y*). In another case (*z*) where the committee were guilty of irregularity in giving notice of the meeting to hear objections, and the appellant did not attend, and the committee afterwards wrote to him that they had considered his objection and could not comply with his request, the London quarter sessions held that the appellant was entitled to appeal. This decision, however, may be said to amount to little more than that the respondents were, in the special circumstances, estopped from taking objection to the appeal.

The use of the words "decision of the assessment committee on an objection *made before them*" in s. 32 of the Valuation (Metropolis) Act, 1869 (*a*), coupled with ss. 11, 42 (5)—(7) of the same Act, and ss. 19—21 of the Union Assessment Committee Act, 1862 (which speak of the objection being "heard"), seems to show that an objection should be made *viva voce*, and that the service of

(*s*) See Appendix II.

(*t*) (1901). Ryde & Konstam's Rat. App. (1894—1904). 42.

(*u*) *Cf. R. v. Suffolk JJ.* (1818). 1 B. & Ald. 640, at pp. 645, 646.

(*x*) (1884). Ryde's Met. Rat. App. 364.

(*y*) *Hoare, Wilson & Co. v. St. Olave's Union*, Ryde's Rat. App. (1886—1890), 209.

(*z*) *British Equitable Assurance Co. v. City of London Union*, Ryde's Rat. App. (1886—1890), 229.

(*a*) See Appendix II.

a written notice of objection is insufficient, apart from any special circumstances such as those above referred to (*b*).

In *R. v. Essex JJ. (c)*, it was held that on the hearing of an objection under s. 1 of the Union Assessment Committee Amendment Act, 1864, a mere formal objection is sufficient without giving evidence in support of it; but the section referred to is repealed as to the metropolis by s. 77 of the Valuation (Metropolis) Act, 1869, and therefore the decision is not strictly in point. But there is nothing in the Act of 1869 requiring anything more than was formerly necessary, save that by s. 11 of that Act the notice of objection must specify the correction desired.

Appeal against totals.—By the latter part of s. 32 of the Valuation (Metropolis) Act, 1869, a right of appeal to the assessment sessions (now the London quarter sessions) is given to certain persons or bodies of persons who are aggrieved by reason of the total gross or rateable value of a parish being too high or too low.

In order to understand the object of this appeal, it must be remembered that the expenditure of many authorities (such as the London County Council, the School Board, and the guardians of a union) is divided among several parishes, in proportion to the total rateable values entered in the valuation lists respectively; the sum required is raised by means of a precept or order addressed to the rating authorities of that parish, who make rates upon the individual ratepayers. For some purposes—if not for all—the total rateable value of a parish may be regarded as a separate entity, and to some extent independent of the values of the individual hereditaments going to make up the total. Thus, if property is put in a provisional list at an increased or reduced assessment, it is expressly provided that the totals are not to be affected (*d*). And if, on an appeal, the special sessions alter the valuation of a hereditament, it is expressly provided that the alteration “shall not of itself . . . alter the totals . . . but may form a reason for an appeal against such totals” (*e*). And where on an appeal against the valuation of a hereditament, the quarter sessions alter that valuation, it has been held that such an alteration does not of itself affect the totals, and that on such an appeal, the sessions cannot alter the totals, which can only be done on an appeal against totals (*f*). In consequence of this decision,

(*b*) See especially *Grundy v. Lewisham Union*, Ryde & Konstam's Rat. App. (1894—1904), 49 : *supra*, p. 675.

(*c*) (1882), 46 J. P. 724 : *vide supra*, p. 526.

(*d*) Valuation (Metropolis) Act, 1869, s. 47 (11) : see Appendix II.

(*e*) Valuation (Metropolis) Act, 1869, s. 20 : see Appendix II.

(*f*) *R. v. Woolwich Union*, [1891] 2 Q. B. 712 : Ryde's Rat. App. (1891—1893), 279. *Cf. Ex parte Wandsworth and Clapham Union*, Ryde's Rat. App. (1891—1893), 93 : *Ex parte Woolwich Union*, *ibid.*, p. 95 : *Ex parte Vestry of St. Mary, Islington*, *ibid.*, 238.

wherever an alteration has been made of an individual assessment on an appeal against that assessment, and it is desired to correct the total for the whole parish so as to make it correctly represent the true arithmetical total, it has become necessary to enter an appeal against totals; and as *ex hypothesi* the necessity for appealing does not arise until the time for appealing has expired, it is necessary to obtain leave of the sessions to serve notice and to enter an appeal, under s. 34 of the Valuation (Metropolis) Act, 1869 (*g*).

It has been held that in an appeal by one parish against the totals of another parish, on the ground that in the latter parish a large number of individual ratepayers have been under-assessed, it is not necessary under s. 33 of the Valuation (Metropolis) Act, 1869, to serve notice of the appeal on the individual ratepayers (*h*). But subsequently the House of Lords held that there was no appeal against totals on the ground that individual assessments were too low (*i*). Lord HERSCHELL, L.C., in giving judgment said: "Possibly, if some principle had been adopted throughout the parish for arriving either at the gross or rateable value which would affect the valuation generally, the case would be within s. 32 of the Valuation (Metropolis) Act, 1869."

Orders as to proceedings and recognizances.—By s. 27 of the Valuation (Metropolis) Act, 1869, the assessment sessions (with the approval of a Secretary of State) might make orders for regulating proceedings on appeals under the Act, and determining recognizances. The Orders now in force were made by the London quarter sessions (*k*) and the regulations contained in them are embodied in this chapter.

These Orders consolidate (with some amendments) the Orders previously in force. As Orders substantially identical with those now in force have been in operation, almost entirely unchallenged (*l*), for more than thirty years, it is not very likely that a question will be raised whether the Orders are *ultra vires* (*m*). It is submitted that the express enactment, giving power to regulate proceedings, must be regarded as giving further powers, beyond

(*g*) See *Vestry of St. Pancras v. Assessment Committee of St. Pancras*, Ryde's Rat. App. (1891—1893), 233. The practice adopted in that case has been repeatedly followed, but a written statement of the case for the appellants and respondents is generally dispensed with.

(*h*) *R. v. General Assessment Sessions* (1886), 17 Q. B. D. 394; *S. C. sub nom. Fulham Union v. St. Mary Abbots, Kensington*, Ryde's Rat. App. (1886—1890), 86.

(*i*) *London County Council v. St. George's Union*, [1894] A. C. 600.

(*k*) They are set out in Appendix II.

(*l*) In *R. v. London JJ.*, [1896] 1 Q. B. 659, *infra*, p. 682, it was contended that the rule corresponding to r. 13 of the Orders of 1898, was *ultra vires*, but the Court of Appeal held the rule to be good.

(*m*) The subject is considered in the Digest of the Practice prefixed to Ryde's Rat. App. (1886—1890), at pp. 52, 53, 55, 56. To the cases there cited may be added *R. v. Bird*, [1898] 2 Q. B. 340.

those possessed by every court of quarter sessions to regulate its own proceedings ; powers of the latter class have been already considered (*n*).

It seems clear that the Orders made under s. 27 of the Valuation (Metropolis) Act, 1869, apply only to appeals under that Act ; and therefore do not apply to an appeal against a rate (*o*) as distinguished from an appeal against a valuation list.

Notice of appeal.—Notice in writing, specifying the correction desired, must be served on or before January 14th next after the list is finally approved—

(1) In all cases on the assessment committee and (unless the appeal relates only to the rateable value of a hereditament) on the surveyor of taxes ;

(2) When the appeal relates to the unfairness or incorrectness of the valuation of, or to the omission of, a hereditament occupied by any person other than the appellant, or to the incorrectness of any matter stated in the list with respect to any such hereditament, then on such person (*p*) ;

(3) If an assessment committee or a surveyor of taxes is the appellant, then also on the overseers of the parish to which the appeal relates (*q*).

As to the mode of serving notice, see s. 65 of the Valuation (Metropolis) Act, 1869. It will be noticed that, in the common form of appeal by a ratepayer against his own assessment, no notice need be given to the overseers, and that the statute does not require the grounds of appeal to be stated in the notice, though it must specify the correction desired (*r*).

If from accident or mistake due notice of appeal has not been given, or if an additional notice of appeal appears to be required, the sessions at the hearing may, if they think it just, order due notice of appeal to be given (*s*). It seems clear that this power of amendment does not enable the sessions to raise a new point on

(*n*) *Vide supra*, pp. 584, 585.

(*o*) *Vide supra*, p. 646, as to the grounds on which an appeal can be brought against a rate in the metropolis.

(*p*) Where the owner or lessee is liable to be assessed or to pay rates in place of the occupier, the notice must be served on such owner or lessee ; but this does not apparently apply where the owner or lessee merely pays rates by arrangement with his tenant, but is not personally liable to the overseers : see the Valuation (Metropolis) Amendment Act, 1884. s. 2, in Appendix II.

(*q*) Valuation (Metropolis) Act, 1869, ss. 33, 42 (12) : see Appendix II. Note the definition of “year” in s. 4, which explains s. 42 (12).

(*r*) It may perhaps be suggested that as the appeal is now taken to quarter sessions instead of the assessment sessions, the notice must comply with s. 1 of 12 & 13 Vict. c. 45 (see Appendix II., *infra*), which requires the grounds of appeal to be stated. Rightly or wrongly, in practice this section has not been complied with. If objection be made on this ground, and the court hold the objection good, it can be met by amendment under s. 34 of the Valuation (Metropolis) Act, 1869.

(*s*) Valuation (Metropolis) Act, 1869, s. 34. For an instance of amendment, see *Bellamy v. St. Olave's Union* (1885), Ryde's Met. Rat. App. 401, where the form of the appeal was entirely re-modelled.

which the appellant is not "aggrieved by any decision of the assessment committee on an objection made before them."

The Valuation (Metropolis) Act, 1869, does not expressly require that the notice of appeal should be signed by the appellant personally, or indeed that it should be signed at all; though it was probably intended that it should be signed, or authenticated in some way. It would probably be held sufficient if signed by a solicitor "for and on behalf of" the appellant. "The general principle is *qui facit per alium, facit per se*. That sanctions the rule that a man may ordinarily give a notice by means of his agent or attorney" (*t*). It is suggested that as an objector may appear before an assessment committee by an agent (*u*), so an agent may sign the notice of appeal from the decision on such an objection. The Valuation (Metropolis) Act, 1869, s. 65, deals with the signature of notices given *by* an assessment committee.

Entry of appeal.—An appeal to the London quarter sessions must be entered by lodging with the clerk of the court a copy of the notice of appeal, on or before January 14th (*x*), which is the date fixed by s. 42 (12) of the Valuation (Metropolis) Act, 1869, for service of notice of appeal. It may, perhaps, be doubted whether, if disobedience to the rule requiring the entry of the appeal on or before January 14th were punished by a refusal to hear an appeal entered after that date, the rule would not be held to be *ultra vires* (*y*). In practice, the assessment sessions and London quarter sessions have repeatedly heard appeals entered after the prescribed date. But a motion for leave to enter the appeal after that date is necessary, and the respondents are entitled to their costs (*z*).

Recognizances or security for costs.—Except in the case of assessment committees, overseers, or a surveyor of taxes, the appellant within seven days after giving notice of appeal, must either enter into recognizances with two sureties, or make a deposit of 50*l.* by way of security for costs (*a*). Note that the seven days run from the date when notice is actually given, and not from the last day for giving notice. It is believed that since the passing of the Valuation (Metropolis) Act, 1869, the sessions have never refused to hear an appeal for failure to enter into

(*t*) *R. v. Middlesex JJ.* (1850), 20 L. J. M. C. 42; where signature by an attorney "for and on behalf and at the request and by the direction of" the appellants, was held sufficient under a statute which did not specify by whom the notice was to be given. See also *R. v. Kent JJ.* (1873), L. R. 8 Q. B. 305, *supra*, p. 580, note (*r*).

(*u*) *R. v. St. Mary Abbots*, [1891] 1 Q. B. 378; Ryde's Rat. App. (1891—1893), 276, *supra*, p. 526.

(*x*) See Orders of 1898, r. 6, in Appendix II.

(*y*) But see the remarks hereon in Ryde's Rat. App. (1886—1890), at pp. 55, 56.

(*z*) *Wordsworth v. St. Saviour's Union*, Ryde's Rat. App. (1891—1893), 13.

(*a*) See Orders of 1898, rr. 3—5, in Appendix II., *infra*.

recognizances in due time. Possibly they might refuse to hear an appeal until recognizances had been entered into, or security given; even assuming that (if that were not done within the prescribed time) they could not altogether refuse to hear the appeal (*b*).

Respondents must give notice of intention to appear.—All persons claiming to appear as respondents must give to the clerk of the court and to the appellant, notice of their intention to appear as respondents, stating whether they intend to appear separately or as joint respondents with other persons. Persons omitting to give notice cannot be heard, unless by special leave of the court, until they have given such notice or complied with such terms as the court may think fit to direct or impose (*c*). The time may be extended by the quarter sessions upon such terms and conditions as to costs or otherwise, as the court may think fit (*d*). Before the making of the rule last quoted, in the event of failure to serve notice in due time, the practice was to move for leave to appear, and, in the absence of special circumstances, leave was generally given, on payment of the appellants' costs of the motion (*e*).

Appearance by an assessment committee.—There is some difficulty in determining in what way the assessment committee are entitled to appear as respondents, though the usual practice is for the assessment committee to appear either in their own name or in the name of the body by whom they are appointed.

Under s. 2 of the Union Assessment Committee Amendment Act, 1864 (*f*), which originally dealt only with an appeal against a *rate*, the assessment committee may appear as respondents to such an appeal, with the consent of the guardians, *but in the name of the guardians*. The effect of this enactment has been already considered in dealing with the practice outside the metropolis (*g*). The Valuation (Metropolis) Act, 1869 (*h*), by s. 1 incorporates the Union Assessment Acts, 1862 and 1864, "for the purposes of" the Act of 1869, "and so far as is consistent with the tenor thereof." The Act of 1869 in effect substitutes (within the metropolis) an appeal against the valuation list for an appeal against the rate based thereon, so far as regards questions of value; although it leaves still existing the right of appeal against a rate on other grounds, *e.g.*, non-occupation, or special exemption (*i*). It is not

(*b*) *Vide supra*, pp. 584, 678, as to the validity of rules of practice.

(*c*) See Orders of 1898, r. 6, in Appendix II.

(*d*) *Ibid.*, r. 21.

(*e*) See, for example, *London County Council v. Fulham Union*, Ryde's Rat. App. (1891—1893), 151.

(*f*) See Appendix II., *infra*.

(*g*) *Vide supra*, pp. 590, 591.

(*h*) See Appendix II., *infra*.

(*i*) *Vide supra*, p. 646.

absolutely clear that s. 2 of the Union Assessment Committee Amendment Act, 1864, applies to an appeal against a valuation list under the Valuation (Metropolis) Act, 1869, in the same way as it applied to an appeal against a rate before that Act was passed. For the words "such appeal" in s. 2 of the Act of 1864 refer to the appeal mentioned in s. 1 of the same Act, which section is repealed as to the metropolis by s. 77 of the Valuation (Metropolis) Act, 1869. On the one hand, it may be contended that, in order to understand the words "*such appeal*" in s. 2 of the Union Assessment Committee Amendment Act, 1864, we may refer to s. 1 of the same Act, notwithstanding its repeal. On the other hand, it may be contended that the "*such*" may now be disregarded, and that the appeal referred to in s. 2 of the Act of 1864 must be taken to be the form of appeal substituted by the Act of 1869, with which it is now incorporated; and that unless s. 2 of the Act of 1864 be so understood, its incorporation with the Act of 1869 becomes wholly inoperative, because the Act of 1869 does not give or deal with a right of appeal against a *rate*, as distinguished from an appeal against a valuation list.

There is a further difficulty: by s. 62 of the Valuation (Metropolis) Act, 1869, "an assessment committee may give such security [for costs] and may appear on any appeal *by their clerk*." It is difficult to say what is the meaning of these words. It has been held (*k*) that they do not mean that the clerk of the committee has the right to be heard on their behalf at quarter sessions; and, apparently, that they merely enable the clerk to appear in court instead of the individual members of the committee. It has been suggested in argument that, under s. 62, the committee may appear in the name of their clerk (*l*); but it is believed that an assessment committee has never claimed so to appear. Even if it be assumed that s. 62 gives the right to appear in the name of the clerk, the question still remains whether they are bound so to appear, or may appear in the name of the guardians under s. 2 of the Union Assessment Committee Amendment Act, 1864.

Assuming that the section last quoted applies to appeals against a valuation list, it must be noticed that by s. 5 (4) (b) of the Valuation (Metropolis) Act, 1869, all the provisions of that Act, and the Acts incorporated therewith (which include the Act of 1864), "in cases where the assessment committee is appointed by the vestry" shall "be construed, so far as is consistent with the tenor thereof, as if the terms vestry, members of the vestry, . . . were respectively substituted for the terms board of guardians, guardians," etc.

(*k*) *R. v. London JJ.*, [1896] 1 Q. B. 659.

(*l*) See *Fulham Union v. St. Mary Abbots, Kensington*, Ryde's Rat. App. (1886—1890), 86, and the remarks thereon, *ibid.*, p. 60.

A further complication arises under the London Government Act, 1899, which transfers the power of appointing the assessment committee from the vestry (or the guardians, as the case may be) to the borough council. For, let us assume it to have been formerly necessary for the assessment committee to appear in the name of the body by whom they were appointed: then although it seems clear that (where they were formerly appointed by the vestry) they must in future appear in the name of the borough council, yet it was (at one time at least) doubtful (where the committee were formerly appointed by the guardians), whether they must in future appear in the name of the borough council or the guardians (*m*). This difficulty seems also to affect the question of liability for costs (*n*). It is submitted that the point is settled by s. 31 (2) of the London Government Act, 1899, which provides that “any enactment in any Act, whether general or local, referring to an authority whose powers or duties are transferred by or under this Act to a borough council shall be construed with the necessary modifications, including the substitution of the borough council for that authority.” The Union Assessment Committee Amendment Act, 1864, seems to come within the scope of this section, and therefore, if s. 2 of that Act applies to an appeal against a valuation list in the metropolis, it must be construed with the substitution of the borough council for the guardians. However this may be, the London (Assessment Committees) Scheme, 1902 (*o*), made under the London Government Act, 1899, provides that “where before the passing of the Act [of 1899] an assessment committee was appointed by a board of guardians, and by virtue of the Act the committee is appointed by the council of a metropolitan borough, all the provisions of the Valuation (Metropolis) Act, 1869, and the enactments incorporated therewith (*p*) or amending the same, shall be construed, so far as is consistent with the tenor thereof, as if references to the borough, council, members of the council, town clerk and general rate were substituted for references to the union, board of guardians, guardians, clerk and assistant clerk of the board of guardians, and common fund.”

Cases to be stated by appellants and respondents.—On or before February 1st next following the entry of an appeal against a valuation list, the appellant (except when the total rateable value appealed against does not exceed 300*l*.) must state his case and the facts to be proved, and the points of law (if any) to be argued in support of the case, and must deliver ten copies to the clerk of the court, and must serve one copy on each respondent; and, in like

(*m*) *Vide supra*, p. 628.

(*n*) *Vide infra*, p. 692.

(*o*) See Appendix II.

(*p*) These include the Union Assessment Acts: see s. 1 of the Valuation (Metropolis) Act, 1869.

manner, each respondent on or before the same day must state his case, and the facts to be proved, and the points of law (if any) to be argued in support of the case, and must deliver ten copies to the clerk of the court and one to the appellant (*q*). The time for stating the case may be extended on terms (*r*).

These cases take the place of the pleadings in an action, or are "by way of giving particulars" (*s*). But the respondents may have to state—and in practice generally do state—their case without seeing the appellant's case.

The rule allowing an extension of time was first made in 1898. Before the making of that rule, the assessment sessions and the London quarter sessions had allowed considerable freedom of amendment (*t*), or had allowed the parties to rely on points not taken in their case (*u*). Where an adjournment was rendered necessary by the insufficient statement of the appellant's case, he was ordered to pay the costs of the adjournment (*x*). Where the sessions allow the notice of appeal to be amended, under s. 34 of the Valuation (Metropolis) Act, 1869, they must either allow the appellant's case to be amended accordingly, or allow him to set up a claim not included in the case; otherwise the amendment of the notice of appeal might be useless. The circumstances of each appeal must determine what is to be stated in the appellant's and respondent's cases; a difficulty often arises in dealing with railways, and gas or waterworks, where the rateable value depends mainly on the gross receipts in the parish, which figures are sometimes not ascertained, even by the appellants, until the eve of the hearing (*y*).

Practice at the hearing at London quarter sessions.—The rules of the quarter sessions direct that all applications required to be made, and consents required to be given, shall be signified by counsel in open court (*z*); and it seems clear that this rule is not *ultra vires* (*a*). One counsel only for each party is heard, except by special leave of the court (*b*). The appellants begin, except

(*q*) See r. 8 of the Orders of 1898, in Appendix II.; as to the form and printing of the documents, see rr. 9, 10, and as to mode of service, r. 22.

(*r*) *Ibid.*, r. 21.

(*s*) *Per A. L. SMITH, J., R. v. General Assessment Sessions* (1886), 17 Q. B. D. 394, at p. 407; *Ryde's Rat. App.* (1886—1890), at p. 93.

(*t*) See *Saunders v. St. Mary, Lambeth*, *Ryde's Rat. App.* (1891—1893), 1.

(*u*) *Improved Industrial Dwellings Co. v. St. Luke's, Chelsea*, *Ryde's Rat. App.* (1891—1893), 21, at pp. 27, 28; but *cf. South Eastern Rail. Co. v. Lewisham Union* (1871), *Ryde's Met. Rat. App.* 52.

(*x*) *Saunders v. St. Mary, Lambeth*, *supra*.

(*y*) See *West London Rail. Co. v. St. Luke's, Chelsea*, *Ryde's Rat. App.* (1886—1890), 82; *New River Co. v. Holborn Union*, *ibid.*, p. 104; *Midland Rail. Co. v. St. Mary, Islington*, *ibid.*, p. 139, at pp. 140, 144.

(*z*) See r. 13 of the Orders of 1898, in Appendix II.

(*a*) See *R. v. London JJ.*, [1896] 1 Q. B. 659. The case was decided on r. 10 of the Orders of 1890 (see *Ryde's Rat. App.* (1886—1890), 394), which was not quite in the same terms as the Orders of 1898; but the decision is equally applicable.

(*b*) See r. 14 of the Orders of 1898.

when a surveyor of taxes is the appellant, in which case the respondents begin (*e*). The order of proceedings follows the usual practice at *nisi prius*.

The clerk of the assessment committee, or his deputy, must attend the court with the valuation list to which the appeal relates, and any alteration therein must be made by the justice acting as chairman of the sessions, and he must place his initials against such alteration (*d*); and before this is done, the order must be completed and taken up (*e*). It is important to see that the alteration of the list is duly made, for without such an alteration it seems that an order made on appeal might be of no effect (*f*).

No order can be made affecting the gross value of a hereditament until proof has been given, orally or by affidavit, that notice of appeal has been served upon the surveyor of taxes (*g*). It has not hitherto been the practice to call upon the appellant to prove service of notice of appeal on any of the respondents before proceeding with the hearing.

Where a motion is made (as distinguished from the hearing of the appeal) two clear days' notice must be given, and a copy of the notice must be filed with the clerk of the court (*h*). The Acts and Orders do not expressly provide for the making of orders to produce documents, or to permit inspection of buildings, before the hearing of the appeal. The sessions can *at the hearing of the appeal* order public officers to produce documents (*i*), and valuation lists, rates, and similar documents, are by ss. 67—69 of the Valuation (Metropolis) Act, 1869, open to inspection. But if, for example, a railway company in the opinion of the court wrongfully refuses inspection of its accounts, the remedy appears to be to subpœna a witness to produce the books, and (if necessary) to ask for an adjournment to consider the effect of the evidence; in such a case the court could deal with the costs of the adjournment (*k*). If inspection of premises is refused, the court could appoint some person to make a valuation, and he would then have the right to enter (*l*).

The same general considerations as to the disqualification of justices on the ground of interest or otherwise, apply as in the case of quarter sessions outside the metropolis (*m*), and there are, it is

(*e*) See r. 15 of the Orders of 1898, and s. 53 of the Valuation (Metropolis) Act, 1869.

(*d*) Valuation (Metropolis) Act, 1869, s. 34.

(*e*) Rule 17 of the Orders of 1898, in Appendix II.

(*f*) See Valuation (Metropolis) Act, 1869, ss. 43, 45, and the declaration in Schedule 4, which is to be added to the rate.

(*g*) See r. 16 of the Orders of 1898.

(*h*) See r. 12 of the Orders of 1898. As to consent motions, see r. 11.

(*i*) See *London County Council v. Bloomsbury*, Ryde's Rat. App. (1891—1893), 38; Valuation (Metropolis) Act, 1869, s. 31.

(*k*) *London County Council v. Bloomsbury*, *supra*.

(*l*) Valuation (Metropolis) Act, 1869, ss. 36, 38.

(*m*) *Vide supra*, pp. 586—590.

believed, no special statutory enactments on this point relating to the London quarter sessions. It may perhaps be doubted whether s. 6 of the Union Assessment Committee Amendment Act, 1864, applies in the case of an appeal against a *valuation list*. It clearly would not, but for the fact that it is one of the sections incorporated with the Valuation (Metropolis) Act, 1869; this incorporation becomes inoperative if the section does not apply to appeals brought under the Act of 1869 (*n*).

The fees payable to the clerk of the court are prescribed by the Orders (*o*).

Power of quarter sessions to amend the list.—By s. 34 of the Valuation (Metropolis) Act, 1869 (*p*), the quarter sessions “may confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as they think just, but shall not make any alteration in contravention of this Act.” The last words here quoted will prevent the court from so altering the list that the deduction from the gross to arrive at the rateable value would exceed the scale prescribed by s. 52 and Schedule III. of the Act. The quarter sessions have held that, where a ratepayer appeals on the ground that he is over-rated, the court has no power to increase the gross value (*q*), and this view appears to be supported by the decision of the Queen’s Bench on an appeal against a rate, outside the metropolis (*r*). But in one case, where a *prima facie* case of fraud was made out against the appellant, the London quarter sessions by consent increased the gross value in the valuation list (*s*). In one or two cases, where the appellants accepted the gross value stated in the list, but claimed a larger deduction therefrom to arrive at the rateable value, the quarter sessions allowed the respondents to give evidence that the true gross value was higher than that stated in the list (*t*). But these cases appear to be overruled by a later decision of the Queen’s Bench Division on an appeal against a rate outside the metropolis (*u*), the principle of which is equally applicable to an appeal against a valuation list.

Where a valuation list is amended on appeal, the alteration must be initialled by the chairman of the court (*v*). Where a list is ordered to be amended, subject to a special case for the opinion

(*n*) Compare the remarks as to U. A. C. A. Act, 1864, s. 2, *supra*, pp. 681, 682.

(*o*) See the Orders of 1898, in Appendix II.

(*p*) See Appendix II., *infra*.

(*q*) *Wood v. St. Saviour’s Union*, Ryde’s Rat. App. (1891—1893), 51, at p. 53.

(*r*) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 207; *et cf. Horton v. Walsall Union*, *infra*.

(*s*) *Waterlow & Sons v. St. Leonard’s, Shoreditch*, Ryde’s Rat. App. (1891—1893), 28.

(*t*) *Middle Class Dwellings Co. v. St. George’s Union*, Ryde’s Rat. App. (1891—1893), 61; *Chappell v. St. George’s Union*, *ibid.*, p. 65.

(*u*) *Horton v. Walsall Union*, [1898] 2 Q. B. 237; *supra*, p. 593.

(*v*) *Vide supra*, p. 685.

of the High Court, the practice is to make the amendment without any stay pending the decision of the special case (*w*).

Reference to arbitration.—It is submitted that the London quarter sessions have no power to refer to arbitration an appeal under the Valuation (Metropolis) Act, 1869, because the assessment sessions had no such power. As will be seen below, this difficulty is met by appointing a valuer, who is treated as if he were an arbitrator.

First, as to the assessment sessions. There is no specific enactment in the Act giving those sessions power to refer an appeal; but s. 26 provides that, with respect to certain specified matters (not necessary to be noted) and “*to all matters necessary for the execution of their duties under this Act,*” those sessions shall “have the same jurisdiction and powers and be in the same position as a court of quarter sessions.” But if by virtue of this clause assessment sessions had *all* the powers of quarter sessions, then the second clause of s. 40 of the Valuation (Metropolis) Act, 1869, (giving power to state a case for the opinion of the High Court), becomes mere surplusage, because that clause is taken almost verbatim from s. 11 of the Quarter Sessions Act, 1849 (*x*), which gave a similar power to courts of quarter sessions. The express application to the assessment sessions of the powers given by s. 11 of the Act of 1849, impliedly excludes the powers given by s. 12 and s. 13 of that Act, which enabled an appeal to quarter sessions to be referred to arbitration (*y*). At one time it was in practice assumed that the assessment sessions had power to order a reference, and such an order was frequently made; but, in and subsequently to the year 1881, the court acted upon the view that they had no jurisdiction to make such an order (*z*).

Next, as to the powers of the London quarter sessions. The Local Government Act, 1888, s. 42 (10), enacts that the London quarter sessions “shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area.” Whatever may be the effect of the first words here cited, it seems clear that, as to questions of jurisdiction, they are controlled by those which immediately follow: and, therefore, as to appeals under the Valuation (Metropolis) Act,

(*w*) *London and India Docks v. Poplar Union* (1898), Ryde & Konstam’s Rat. App. (1894—1904), 23. It is believed that the decision in that case follows the practice adopted, without question, in many other cases.

(*x*) 12 & 13 Vict. c. 45: see Appendix II.

(*y*) *Vide supra*, p. 596.

(*z*) See Ryde’s Met. Rat. App., pp. 257, 268, 348. Compare also the Orders of 1870 (*ibid.*, p. 457), with the Orders of 1890 (Ryde’s Rat. App. (1886—1890), 392); the latter Orders omitted the rule which assumed the existence of a power to refer to arbitration.

1869, the London quarter sessions have exactly the same jurisdiction as was formerly vested in the assessment sessions. If, therefore, the assessment sessions could not order a reference to arbitration, neither (it is submitted) can the London quarter sessions. And the London quarter sessions appear to have adopted this view (a); at all events, it is believed that they have never made an order referring an appeal to arbitration.

Order to make a valuation or a valuation list.—By s. 36 of the Valuation (Metropolis) Act, 1869 (b), *if any of the parties to the appeal apply* to the quarter sessions (c) to direct a valuation of any hereditament with respect to which any appeal may be made, and give security for the costs of such valuation, the court may “in their discretion” appoint some proper person to make such valuation. Orders have been made under this section where all the parties to the appeal did not consent (d). It is believed that where all parties consented to the application it has never been refused. The nomination of the valuer rests with the court, though it is the practice to consult the parties (e). Where a valuer has been appointed, the court may fix some subsequent day, either before or after the day before which all appeals are required to be heard, for receiving the valuation, and may adjourn the hearing to that day (f). The report of the valuer is, in form, merely evidence for the guidance of the court. And it has been held by the London quarter sessions that the report of the valuer is not binding on the court or on the parties (g). Of course the parties may by consent agree to be so bound. The valuation must be in writing, and the valuer has power to enter the premises (h). The costs of the valuation are in the discretion of the court (i).

In practice the appointment of a valuer has been adopted as a substitute for a reference to arbitration. In many cases the parties have appeared by counsel and called evidence before a valuer as if he were an arbitrator, and the so-called “valuer” has not

(a) See *London, Chatham and Dover Rail. Co. v. St. Saviour's Union*, Ryde's Rat. App. (1891—1893), 112; *Pearson v. Holborn Union*, *ibid.*, p. 152; *South Eastern Rail. Co. v. St. Saviour's Union*, *ibid.*, p. 226.

(b) See Appendix II., *infra*.

(c) The application cannot be made to special sessions.

(d) *East London Waterworks v. St. Leonard's, Shoreditch*, Ryde's Rat. App. (1886—1890), 155; *London and St. Katherine Docks Co. v. Stepney Union*, *ibid.*, p. 162.

(e) *London, Chatham and Dover Rail. Co. v. St. Saviour's Union*, Ryde's Rat. App. (1891—1893), 112.

(f) Valuation (Metropolis) Act, 1869, s. 37.

(g) *London County Council v. St. Saviour's Union* (1902), Ryde & Konstam's Rat. App. (1894—1904), 65.

(h) *Ibid.*, s. 38. With this section compare U. A. C. A. Act, 1864, s. 4, in Appendix II., and see *Rawlence v. Hursley Union* (1877), 3 Ex. D. 44; *supra*, p. 527.

(i) Valuation (Metropolis) Act, 1869, s. 39.

unfrequently been a barrister. But the London quarter sessions have held that, unless the parties agree how the cost of the parties in the proceedings before the valuer shall be dealt with, the sessions have no power to deal with them, and have no jurisdiction to make an order as to costs other than the valuer's fees, and the costs of the proceedings before the sessions (*j*). In some cases the costs have by consent been left to the discretion of the valuer (*k*), though the question whether those costs should include the costs of shorthand notes of the evidence given before him was dealt with by the court, after hearing the evidence of the valuer (*l*). In other cases the costs have been dealt with by the sessions on receiving the valuer's report (*m*), but in one case at least the sessions have consulted the valuer before making the order (*n*).

Where there is no approved valuation list for a parish, the sessions may appoint some person to make one, which is to be deposited, etc., in such manner as the court may direct, following as near as may be the provisions as to the list originally to be made (*o*). Apparently the Act allows the right of objection before the assessment committee, and of appeal to quarter sessions against a list so ordered; and there is no time limited for hearing appeals against such a list (*p*).

Costs.—The costs of any appeal against a valuation list, including the cost of a valuation ordered by the court (*q*), are in the discretion of the special sessions or the London quarter sessions, as the case may be, and shall be awarded by them to be paid by such parties to the appeal, and in such proportions as they think just (*r*).

On comparing this section with the enactments giving quarter sessions power to give costs on appeal against a rate (*s*), it will be found that on an appeal against a valuation list under the Valuation (Metropolis) Act, 1869, the court has a wider discretion than under the earlier Acts. For those Acts (apart from the power to deal with frivolous grounds of appeal) enabled the

(*j*) *Grand Junction Waterworks Co. v. Paddington* (1902), Ryde & Konstam's Rat. App. (1894—1904), 67.

(*k*) See *London and South Western Rail. Co. v. Wandsworth and Clapham Union* (1881), Ryde's Met. Rat. App. 257.

(*l*) *Ibid.*, p. 331.

(*m*) *East London Waterworks v. St. Leonard's, Shoreditch*, Ryde's Rat. App. (1886—1890), 155; *London and North Western Rail. Co. v. Fulham Union*, *ibid.*, p. 179; *R. v. General Assessment Sessions*, *ibid.*, p. 268; *London County Council v. St. Saviour's Union* (1902), Ryde and Konstam's Rat. App. (1894—1904), 65; *Grand Junction Waterworks Co. v. Paddington*, *ibid.*, 67.

(*n*) *South Eastern Rail. Co. v. St. Saviour's Union*, Ryde's Rat. App. (1891—1893), 226.

(*o*) Valuation (Metropolis) Act, 1869, ss. 35, 37.

(*p*) *Ibid.*, ss. 37, 42 (13).

(*q*) *Vide supra*, p. 688. It must be noticed that (*except by consent*) the sessions cannot deal with the costs of the parties before the valuer; see note (*j*), *supra*.

(*r*) Valuation (Metropolis) Act, 1869, s. 39, in Appendix II.

(*s*) See the Poor Relief Act, 1743 (17 Geo. 2, c. 38), s. 4; and the Quarter Sessions Act 1849 (12 & 13 Vict. c. 45), ss. 4, 5, in Appendix II.; *et vide supra*, pp. 597, 598.

sessions to give costs *only to the successful party*; whereas, according to the decisions of the London quarter sessions, the Act of 1869 enables the court to give the respondents their costs where the appellant obtains a small reduction, but fails on the main question of principle raised by the appeal (*t*); or to give an appellant his costs, although he fails to obtain any reduction, where the assessment committee have not fairly heard his objection (*u*). It may be suggested that the latter proposition is inconsistent with the rule that a court, even when it has full discretion over costs, has no jurisdiction to order a successful defendant to pay the costs of a plaintiff who altogether fails (*x*). But if the cases cited in the note are examined, a distinction will be seen. Thus in *Dicks v. Yates* (*y*), JAMES, L.J., points out an "essential difference" between a plaintiff and defendant: "the defendant is dragged into court, and cannot be made liable to pay the whole costs of the action, if the plaintiff had no title to bring him there." Again, in *Foster v. Great Western Rail. Co.* (*z*), where the railway company were in a position analogous to that of defendants in an action, and it was held that the railway commissioners had no jurisdiction to give costs against the company, who were successful on every issue, merely "on account of some neglect on their part, before the litigation began." But it was pointed out in the same case (*a*) that "the successful party may be ordered to pay the costs occasioned by improperly conducting the proceedings." So, too, in *Andrew v. Grove* (*b*), where it was held that a county court judge had no power to order a defendant to pay the costs of an action in which the plaintiff altogether failed, it was held that the judge had power "to order a successful defendant to pay such part of the plaintiff's costs as had been caused by the defendant's misconduct in the action." It is true that the objection before the assessment committee is distinct from the appeal to quarter sessions, but the former is a necessary step towards (and the cause of) the latter; and if an assessment committee were, as the sessions found in *Mills v. St. Olave's Union* (*c*), guilty of improper conduct in not fairly hearing the objection, their position would be somewhat different from that of "the defendant dragged into court" (*d*), or

(*t*) *London and North Western Rail. Co. v. Hackney Union*, Ryde's Rat. App. (1886—1890), 136; *London and North Western Rail. Co. v. City of London Union*, Ryde's Rat. App. (1891—1893), 229; and cf. *Lindsay v. St. George's Union*, *ibid.*, p. 18. Compare *Kirby v. Hunslet Union*, cited *supra*, p. 598, note (*u*).

(*u*) *Mills v. St. Olave's Union*, Ryde's Rat. App. (1886—1890), 84.

(*x*) *Dicks v. Yates* (1881), 18 Ch. D. 76; *Foster v. Great Western Rail. Co.* (1882), 8 Q. B. D. 515; *Andrew v. Grove*, [1902] 1 K. B. 625.

(*y*) (1881), 18 Ch. D. 76, at p. 85.

(*z*) (1882), 8 Q. B. D. 515; see *per* BRETT, L.J., at p. 519.

(*a*) 8 Q. B. D., at p. 523; *per* COTTON, L.J.

(*b*) [1902] 1 K. B. 625, at p. 628; *per* CHANNELL, J.

(*c*) Ryde's Rat. App. (1886—1890), 84.

(*d*) See *Dicks v. Yates*, *supra*.

that of a railway company who were merely "guilty of neglect before the litigation began" (*e*).

In some cases the London quarter sessions have refused to give a successful appellant any costs, or to give him his costs in full, where he has claimed a much larger reduction than that allowed by the court (*f*). But, apart from special circumstances, the general rule has been that, if the appellant obtains a substantial reduction he is entitled to costs. Questions as to apportionment of costs (where several appeals are heard together, or where one appeal relates to several hereditaments or raises several points), and questions depending on the circumstances of the particular case can hardly be considered in this volume (*g*).

It was held by the Queen's Bench Division that, when once the assessment sessions had parted with a case, without giving costs, the sessions sitting in a subsequent year could not give costs (*h*); and this decision seems to be supported by the decisions as to the powers of quarter sessions (*i*). And where the assessment sessions made an order giving the appellants their costs of the appeal, and thirteen days later the same court, *differently constituted*, altered this order by directing that each party should bear his own costs, the Queen's Bench Division held that the second order was bad (*k*).

Taxation of costs.—It is not quite clear whether the assessment sessions were in exactly the same position as quarter sessions, so far as the taxation of costs was concerned (*l*); and if they were not, whether the substitution of the London quarter sessions for the assessment sessions (*m*) has made any difference in this respect. The safest course is to obtain a formal consent to tax out of session, in order to avoid the difficulty of deciding when the assessment sessions came to an end (*n*). Where such consent is given, the taxation can be conducted in the same way as at quarter sessions, after the sessions are over.

The costs are taxed by the clerk of the court, and any party dissatisfied may carry in objections to the taxation, and the procedure thereupon is the same as in the High Court, so far as is

(*e*) See *Foster v. Great Western Rail. Co.*, *supra*.

(*f*) *Royal Masonic Institution v. Wandsworth and Clapham Union*, Ryde's Rat. App. (1891—1893), 8; *Braby & Co. v. Greenwich Union*, *ibid.*, p. 54; see also *South Eastern Rail. Co. v. St. Saviour's Union*, *ibid.*, p. 226.

(*g*) In the three volumes of Reports of Rating Appeals, by the present writer, will be found many cases in which questions as to costs, more or less complicated, were considered by the sessions.

(*h*) *Hodge & Sons v. Poplar Union*, Ryde's Rat. App. (1886—1890), 284.

(*i*) *Vide supra*, p. 599.

(*k*) *R. v. General Assessment Sessions*, Ryde's Rat. App. (1886—1890), 268.

Cf. Leverson v. R. (1869), L. R. 4 Q. B. 394, at p. 405.

(*l*) The taxation of costs at quarter sessions is considered *supra*, p. 602.

(*m*) *Vide supra*, p. 670.

(*n*) See Ryde's Rat. App. (1886—1890), 181, 182.

practicable (*o*). On questions of amount, the court generally (*p*) refuse to interfere with the discretion of the taxing-master, and the burden of proof is on the party seeking to disturb the taxation (*q*). It is not clear how long after the making of the order a motion may be made to review the taxation. In one case, a motion was made at the sitting of the assessment sessions in 1883, to review the taxation of costs ordered to be paid in 1882 (*r*).

Recovery of costs.—By s. 39 of the Valuation (Metropolis) Act, 1869, costs ordered to be paid by special sessions or assessment sessions on appeals against a valuation list “may be recovered as if they had been awarded by a court of quarter sessions, and when ordered to be paid by parties other than a ratepayer, shall be paid as in this Act mentioned” (*s*). The substitution of the London quarter sessions for the assessment sessions can have made no difference on this point. The recovery of costs awarded by quarter sessions has been already considered (*t*). Where an assessment committee are appointed by a metropolitan borough council under the London Government Act, 1899, whether the appointment was (before that Act) made by a vestry (*u*) or a board of guardians, the costs of the assessment are (it is submitted) payable by the borough council (*x*). It is believed that this view has been acted upon, in practice.

Appeal from London quarter sessions to King's Bench Division.—“The same proceedings may be had by special case and *certiorari* or otherwise, for questioning any decision of the justices in assessment sessions, as may be had for questioning any decision of the justices in general or quarter sessions, provided that every such *certiorari* shall be sued out within three months after the decision is given” (*y*). The substitution of the London

(*o*) See rr. 18, 19 of the Orders of 1898, in Appendix II.

(*p*) But not always; see *Courage v. St. Olave's Union* (1896), Ryde & Kon-stam's Rat. App. (1894—1904), 13.

(*q*) *Esdale v. City of London Union*, Ryde's Rat. App. (1886—1890), 105, at p. 111; *Waterlow & Sons v. St. Leonard's, Shoreditch*, Ryde's Rat. App. (1891—1893), 28.

(*r*) *London and North Western Rail. Co. v. St. Leonard's, Shoreditch*, Ryde's Met. Rat. App. 340. With this decision *cf. Blackpool Tower Co. v. Fylde Union*, (1903), 67 J. P. 379, *supra*, p. 602.

(*s*) See s. 48, and U. A. C. Act, 1862, s. 38, and U. A. C. A. Act, 1864, s. 3.

(*t*) *Supra*, p. 603.

(*u*) See the concluding paragraphs of s. 5 of the Valuation (Metropolis) Act, 1869, in Appendix II.; and *Fulham Union v. St. Mary Abbots*, Ryde's Rat. App. (1886—1890), 86, at p. 93.

(*x*) As to cases where the appointment was formerly made by the guardians, see s. 31 (2) of the London Government Act, 1899, and the London (Assessment Committees) Scheme, 1902, in Appendix II. See also p. 683, *supra*. Where the appointment was formerly made by the vestry, the borough council seem to be clearly liable as successors of the vestry under s. 4 (1) of the London Government Act, 1899; see Appendix II., *infra*.

(*y*) Valuation (Metropolis) Act, 1869, s. 40.

quarter sessions for the assessment sessions, under the Local Government Act, 1888 (z), has made no alteration in this respect. The proceedings which may be had for questioning a decision of quarter sessions have been already considered (a). It has been suggested that the time for applying for *certiorari* is extended to *six* months by the Crown Office Rules, 1886, r. 33, which provides that "no writ of *certiorari* shall be granted for removing any judgment, order, etc., of justices, . . . unless such writ be applied for within six calendar months next after such judgment, order, etc., shall be made." It is submitted that this rule does not extend the time limited by the Valuation (Metropolis) Act, 1869, s. 40. The rule enacts, in effect, that any application made after the expiration of six months shall be too late: it does not say that all applications made within six months shall be in time. At all events, it would be best to assume (when applying for the writ) that it must be sued out within three months.

Special case stated by order of a judge.—In addition to the procedure by means of a special case stated by order of the quarter sessions (after the appeal has been heard) for obtaining the opinion of the King's Bench Division, the Valuation (Metropolis) Act, 1869, provides a means of going to the King's Bench without a hearing at quarter sessions: for the second clause of s. 40 (b), in effect, enacts, that at any time after notice given of appeal under the Act, it shall be lawful for the parties, by consent and by order of a judge, to state the facts of the case in the form of a special case for the opinion of the King's Bench Division, and to agree that a judgment in conformity with the decision of that court, and for such costs as that court may adjudge, may be entered on the application of either party at the sessions next or next but one after such decision has been given, and such judgment may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the sessions upon an appeal duly brought before them and adjourned; and the justices shall, if necessary, hold a sessions or an adjourned sessions for this purpose (c).

This clause is substantially to the same effect as s. 11 of the Quarter Sessions Act, 1849 (d), which applies *mutatis mutandis* to quarter sessions; and what has been said above (e) as to cases

(z) *Vide supra*, p. 670.

(a) *Vide supra*, pp. 608—613.

(b) See Appendix II., *infra*.

(c) Instances of appeals under this section will be found in *Nicholson v. Holborn Union* (1886), 18 Q. B. D. 161; *supra*, p. 94; *Pearson v. Holborn Union*, [1893] 1 Q. B. 389; *Ryde's Rat. App.* (1891—1893), 303; *supra*, p. 97; *Middlesex County Council v. St. George's Union*, [1897] 1 Q. B. 64; *supra*, p. 94.

(d) 12 & 13 Vict. c. 45 (Baines' Act): see Appendix II.

(e) *Vide supra*, pp. 613, 614.

stated under that section applies equally to cases stated under s. 40 of the Valuation (Metropolis) Act, 1869, subject to this qualification, viz., that cases stated under the Quarter Sessions Act, 1849, are specially excepted from the operation of s. 2 of the Supreme Court of Judicature (Procedure) Act, 1894 (*f*); while that section makes no mention of cases stated under s. 40 of the Valuation (Metropolis) Act, 1869. It may, therefore, be contended that cases stated under the latter section are governed by s. 2 of the Act of 1894, although some of the provisions of that section seem to apply only to cases where there has already been a decision at quarter sessions.

(*f*) See Appendix II., *infra*.

APPENDIX I.

THE PAROCHIAL PRINCIPLE APPLIED TO RAILWAYS AND CANALS.

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Preliminary.—The effect of the decisions relating to the apportionment of the rateable value of railways and canals (among the several parishes in which they lie) has already been stated (*a*). As it appears that there is an irreconcilable conflict between some of the decisions (*b*), it has been thought desirable to state which of the cases are (in the writer's opinion) founded upon the right principle. For the conflict between two sets of decisions may render it necessary at some future date for the House of Lords to decide which shall be followed ; or it may be thought necessary to resort to legislation. Whatever be the method adopted of solving the difficulty, this statement of the writer's opinion is submitted as a summary of the arguments based on one group of cases. The results at which he has arrived are (1) that the decided cases prove that "contributive value" (where it exists in fact) must be taken into account in estimating rateable value ; and (2) that the necessary corollary of this conclusion is that the "parochial principle" cannot be strictly applied to any one part of a railway system, if any other part is liable to be rated with reference to its "contributive value."

(*a*) See p. 201 *et seq.*, as to railways, and pp. 341—344 as to canals.

(*b*) Compare, for example, *South Eastern Rail. Co. v. Dorking* (1854), 3 E. & B. 491, *supra*, p. 216, with *R. v. Llantrissant* (1869), L. R. 4 Q. B. 354, *supra*, p. 220.

The "parochial principle" stated.—The "parochial principle," which was adopted first in rating canals, and subsequently with such far-reaching consequences in rating railways, may, perhaps, be stated in the words of COLERIDGE, J., in *R. v. London, Brighton and South Coast Rail. Co.* (c): "The value which the land occupied in each parish produces, after the due allowances, is that upon which the occupier is to be rated in each." The statement of this rule follows very closely a citation of *R. v. Kingswinford* (d), and a reference to the judgment in that case shows, or at all events suggests, that COLERIDGE, J., when he used the words "the value which the land produces," was thinking of the profits and not of the value of the occupation. Whether that be so, or not, it is certain that in *R. v. Kingswinford*, and in many modern cases which have adopted the "parochial principle," the profits earned on the land in each parish (and not the value of that land) were regarded as the measure of rateable value. It is submitted that the "parochial principle" (taking that term to mean the principle laid down in *R. v. Kingswinford*) is wrong, and, indeed, it has not been consistently followed: for in parishes where railways have been productive of profit, the profits have been made the measure of rateable value; whereas in parishes where there have been no profits, railways have been held still to have a rateable value. But if profits are the measure of rateable value, so that as profits diminish, rateable value diminishes, it follows that when profits disappear altogether, rateable value should also disappear. But the courts have refused to follow out the principle to its logical conclusion, and have held that a line of railway worked at a loss may still have a rateable value (e), and railway stations, and the works and reservoirs of gas and water companies, though not productive of profit, have always been rated at substantial amounts (f). The conflict of decisions, which must be admitted to exist, seems to have arisen from a fallacy which renders unsound the reasoning of the judgment in *R. v. Kingswinford* (g); and this mistake has been aggravated by a mis-application of the principle of that case to circumstances which are entirely different. The fallacy consists of a confusion of the value of land with the profits earned on the land; and of the substitution of a rate on the profits, for a rate on the land in proportion to the value of that land. How this confusion arose

(c) (1851), 15 Q. B. 313; *vide supra*, p. 204.

(d) (1827), 7 B. & C. 236; *supra*, pp. 341, 342.

(e) See *London and North Western Rail. Co. v. Overseers of Cannock* (1863), 9 L. T. 325, *supra*, p. 213; *London and North Western Rail. Co. v. Irthlingborough* (1876), 35 L. T. 327; *supra*, p. 223.

(f) See *R. v. Mile End Old Town* (1847), 10 Q. B. 208; *supra*, p. 282; *R. v. West Middlesex Waterworks Co.* (1859), 1 E. & E. 716; *supra*, p. 283.

(g) (1827), 7 B. & C. 236.

will at once be made clear by a review of the history of the law of rating as applied to canals.

History of the rating of canals.—In the latter part of the eighteenth century when it first became necessary to consider whether canals and canal tolls were rateable, tolls (including *inter alia* canal tolls) were supposed to be rateable, whether connected with the occupation of land or not ; and they were in fact rated in that parish where they became due ; *i.e.*, at the end of the voyage in respect of which the tolls were paid, although that voyage might have extended through several other parishes ; and in those other parishes the canal tolls were not rated (*h*). In 1810 it was decided in *R. v. Nicholson* (*i*) that tolls *per se* were not rateable, unless they were connected with land, or arose from the use of land. This case in effect recalled the courts to the exact words of the statute, 43 Eliz. c. 2, which imposes the poor rate upon “land,” and does not mention as the subject of the rate to be imposed on the occupier anything which could include “tolls,” regarded as an incorporeal hereditament. On the day on which *R. v. Nicholson* was decided, the same court held in *R. v. Macdonald* (*k*), that tolls paid for passing through a lock could be regarded as the profits of the lock, and so could be indirectly rated by rating the lock. It is at this point that the fallacy crept in which vitiates the reasoning of several of the cases, including *R. v. Palmer* (*l*) and *R. v. Kingswinford* (*m*). It is correct to say that the rate is imposed on “land” : it is correct to say that, if the “land” is rated according to its value, and the rate is imposed on that value as increased by the profits which are earned by the “land,” then the profits of the “land,” are indirectly rated. But it is incorrect to say, or to imply, that the statute, 43 Eliz. c. 2, imposes the rate on the profits of the “land” ; and this substitution of the profits of the land for the land itself, as the subject on which the rate is imposed, is the source of the subsequent confusion. In particular cases and for particular purposes, as in *R. v. Palmer*, it may make no practical difference whether the rate be regarded as imposed on the land, or on the profits of the land ; but it is always dangerous to substitute another term for the term used in the statute, and then to argue from the meaning and effect of the substituted term. And if the reader will turn to the judgment of BAYLEY, J., in *R. v. Kingswinford* (*n*), he will find that the learned judge seems to regard “land” and “profits derived from the use of land” as convertible terms.

(*h*) *Vide supra*, p. 334.

(*i*) (1810), 12 East, 330 ; *supra*, pp. 308, 309.

(*k*) (1810), 12 East, 324 ; *supra*, p. 335.

(*l*) (1823), 1 B. & C. 546 ; *supra*, p. 340.

(*m*) (1827), 7 B. & C. 236 ; *supra*, p. 341.

(*n*) (1827), 7 B. & C. 236, at p. 241 ; *supra*, pp. 341, 342.

The profits of land distinguished from its value.—The poor rate being imposed on land, and not on the profits of the land, it was early decided that the rate must be in proportion to the value of the land. Land may be of value though productive of no pecuniary profits, as in the case of land occupied by a private dwelling-house; and land is rateable whenever its occupation is of value, even though there be no pecuniary profit to the occupier (*o*). If there can be a rateable value where there are no profits, it is obvious that the amount of profit is not necessarily the measure of rateable value; and ever since the passing of the Parochial Assessments Act, 1836, the measure of value has been not the profit which the tenant makes, or can make, but the rent which the tenant may be expected to pay (*p*). And even before 1836, the same measure had been applied to the rating of canals (*q*).

It may, however, be said that where land is occupied for the sake of making profit, as in the case of a canal constructed, owned, and occupied by a trading company formed for the purpose of making profit, the profits of the land constitute the value of the land; that no tenant will occupy such land except for the sake of making profit; that the amount of the profit which the tenant makes, or can make, will regulate the rent which the tenant may be expected to pay; and that consequently the profits of the land, and the rent which the tenant may be expected to pay, give one and the same measure of rateable value. These propositions are true, but they do not support the judgment of BAYLEY, J., in *R. v. Kingswinford* (*r*); for they merely express that which was common ground between the parties, and they stop just short of the very point which the court was called upon to decide. For it was not disputed in that case that the rateable value of the canal *as a whole* was to be deduced from the profits of the canal *as a whole*; the question which the court had to decide was, what was the correct principle for apportioning the rateable value of the canal as a whole among the several parishes in which the canal lay. Now, it is obvious that although the canal company, as a trading company, might occupy the canal as a whole only for the sake of the profits earned over the whole, it by no means follows that the company occupied each part of the canal only for the sake of the profits earned in that part. The company might or might not do so: and whether they did so or not in the particular case before the court in *R. v. Kingswinford* is a pure question of fact, and it is very important to notice how the question of fact was dealt with by BAYLEY, J., in delivering the judgment of the court. The part of the canal in any

(*o*) See *London County Council v. Erith and West Ham*, [1893] A. C. 562; Ryde's Rat. App. (1891—1893), 413; *supra*, p. 142.

(*p*) See *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134.

(*q*) See the cases cited in note (*q*), *supra*, p. 152.

(*r*) (1827), 7 B. & C. 236; *supra*, p. 341.

particular parish might be of value to the company, not by reason of the profits earned in that parish, but because that part contributed to the profits earned in other parishes. If that fact were shown, the canal company (or any tenant of the canal) would give a rent for that part of the canal, even though there were no profits earned on that particular part; and, because that particular part contributed to the earning of profits in other parishes, a tenant would give for that part a rent higher than the earnings on that part would warrant. But BAYLEY, J., in his judgment in *R. v. Kingswinford* (s), says: "It may happen that in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six [parishes through which the canal runs]. Why are the other parishes to have any part of the tolls earned in that parish? (t) *The land in those parishes contributes nothing towards earning the sum derived in the other parish from the use of the land there.*" The sentence last quoted negatives (as a finding of fact) the existence of what is commonly called "contributive value": it states as a fact that the profits of the part of the canal in each parish created the only value of that part. And if the value of each part depended only on the profits earned in that part, it is clear that the rateable value of the whole system must be apportioned among the several parishes in proportion to the profits earned in each parish. The judgment in *R. v. Kingswinford* depends on the finding of fact that the part of the canal in each parish contributed nothing to the earnings of the canal in other parishes. Whether this finding of fact was correct or not is immaterial, for no case can be cited as a binding authority on a finding of a fact (u), but only as showing the rule of law to be applied to the facts as found.

What has been said above may be summarised thus: in the writer's opinion, the judgment in *R. v. Kingswinford* (x) is wrong if it lays down as a general proposition that the occupier of land in a parish is to be rated in proportion to the profits earned on that land, and not in proportion to the value of the land: the judgment can only be acquitted of error on this point, by showing that it does not lay down a general proposition, but merely defines the rule applicable to land, the profits of which constitute the sole value, and which has no additional value by reason of its contributing to profits earned in another parish; and if the judgment be limited in this way, it is wrong to apply it to land, the profits of which do *not* constitute its sole value to the occupier, and which

(s) *Vide supra*, p. 342.

(t) In this sentence the judge clearly treats the rate as imposed directly on the tolls, not on the land.

(u) *Blyth Harbour Commissioners v. Overseers of Newsham*, [1894] 2 Q. B. 675; at p. 679.

(x) (1827), 7 B. & C. 236; *supra*, p. 341.

has an additional value by reason of its contributing to profits earned in another parish.

Distinction between railways and canals.—The method adopted in rating railways was founded on the rating of the canals of which they have taken the place. But there is an obvious distinction between the working of them, which has an important bearing on the question whether the part (of a canal or a railway) in each parish should be rated solely with reference to the profits earned on that part, or should be regarded also as contributing to the profits earned on other parts. In *R. v. Kingswinford* (*y*), as we have seen, the court laid down, with reference to a canal, the parochial principle pure and simple; *i.e.*, they held that the rating in each parish was to be based solely on the profits in that parish. How far is this principle applicable to a railway?

In one sense each part of a canal, or of a railway, contributes to the profits and to the value of the whole, and of every other part, over which it sends any through traffic. If a canal or a railway runs from Worcester to Birmingham, it is essential (if goods are to be carried from one town to the other) that each intermediate part of the canal or railway should exist and should be in working order. But as each part must exist and be in working order in order to earn the profits of that part, it is hardly necessary to consider the assistance which each part gives to and receives from each of the other parts; and it was no doubt in this sense that BAYLEY, J., in *R. v. Kingswinford*, said that the land in each parish contributed nothing towards earning the sum derived from the use of the land in other parishes. In *R. v. Kingswinford* the court were dealing with tolls received by a canal company from persons who navigated their own boats; it does not appear that the company acted as carriers, or (if they did) that they were rated at any higher amount on account of the profits which they made on their canal as carriers. A railway company, on the other hand, act as carriers, and (in most cases) derive the bulk of their profits from carrying on the trade of carriers, the right reserved to the public (under the Railways Clauses Consolidation Act, 1845, s. 92) to use the railway with their own engines and carriages, on payment of toll, being practically obsolete (*z*). A canal company are not concerned with the cost of towing or navigating vessels along their canal, or of providing the vessels; whereas a railway company have to provide the carriages and waggons, the engines, and the coals to drive them, and to pay the men in charge of the trains. And the expenses of a railway company under all of these

(*y*) (1827), 7 B. & C 236; *supra*, pp. 341, 699.

(*z*) The question how payments by other railway companies (in the nature of tolls for running powers, etc.) are to be dealt with, is considered, *supra*, pp. 232—246.

heads do not vary in proportion to the gross earnings. Whether a train runs from Southampton to London half empty or quite full, the difference in the expense to the railway company may be inappreciable, though the difference in the gross earnings may be enormous. A train of twenty carriages of course costs more than a train of ten carriages ; but many of the expenses are constant and do not vary with the length of the train. For example, the expenses of signalling and the wages of the driver and fireman on the engine are unaltered. Again, it is in practice impossible to adapt the length of the train precisely to the number of passengers on each section of the line : for a carriage cannot be dropped or picked up at any station where a dozen passengers get out or get in. Consequently it may be necessary to run a certain number of carriages for the whole of a journey, though they may be nearly empty for great part of the way. The constant character of the expenses incurred in earning a varying amount of receipts forms an important element in considering the working of railways ; but in the working of canals the same causes either did not exist, or (if they did) had so little effect that they appear to have been ignored in dealing with the rating of canals.

The value of an unprofitable branch line.—It is in dealing with a branch line that the difference between the net profits earned on a line and the value of the line becomes most marked ; for we frequently find a railway company willing to construct and work a branch line, the working of which produces (and before its construction was expected to produce) no net profits at all, or such a small surplus of receipts over working expenses as to be insufficient to keep down the interest on the capital raised and spent in the construction of the line. In such a case, if the branch line be rated with reference only to the net receipts on the branch, the rateable value will be nothing or next to nothing. This seems a strange result to arrive at, where the company have spent a considerable amount of capital in order to get the line, and have got exactly what they wanted and what they expected to get ; but the result seems inevitable, if the profits earned on the branch are made the measure of the rateable value of the branch. Let us consider some of the motives which may induce a railway company to construct (or acquire) and work a branch, the profits of which (if any) are so small as to be inappreciable.

We have already noticed that the cost of drawing a full train is not appreciably greater than the cost of drawing a train half full. Suppose that a company has a main line fifty miles long, say, from London to A., and the trains on this line run half empty. The company see that if a short branch line (or a light railway) were constructed from A. to B. the effect would be to bring more

passengers on to their main line ; and they estimate that each train travelling between London and A. would carry (on the average) ten more passengers, who would pay on the average a fare of two shillings each for travelling on the line between London and A. Each train on the main line will then on the average earn one pound more, which will represent (taking about twenty trains a day) an additional income of, say, 6,500*l.* a year, in respect of traffic on the main line, without causing any appreciable addition to the working expenses, inasmuch as the trains have been (we supposed) running half empty. The company estimate that, to earn these additional receipts on the main line, the traffic on the branch line must be carried at fares which will just pay the working expenses (including interest on the cost of providing the rolling stock), and no more ; they further estimate that the cost of constructing the branch line and of obtaining the necessary parliamentary powers, etc., will be 100,000*l.* This sum the company can borrow by means of debentures at three per cent., or an independent company can be formed who will grant a lease of the line to the original company at a rent of 3,000*l.* a year, which will pay three per cent. on 100,000*l.*, the capital of the new company. We have seen that the estimated net gain on the main line due to the construction of the branch is 6,500*l.* : the old company can therefore well afford to pay three per cent. on 100,000*l.* raised by debentures, or to pay three per cent. on the share capital of the new company ; and, assuming that the receipts on the branch exactly pay the working expenses, and no more, still it will be to the interest of the old company either to construct the branch line for themselves or to get the new company to construct it in order that the old company may take a lease of it. Suppose that a new company construct the branch line, a lease of it in perpetuity is granted to the old company, and every anticipation is fulfilled (*a*) as to the traffic and the receipts and expenses on the branch and the increased profit on the main line. On what principle is the rateable value of the branch line to be ascertained ?

We will assume that the branch line is in one parish only, and that none of the main line extends into that parish. If the principle adopted in *R. v. Kingswinford* (*b*) be applied to the branch line, it must be rated solely with reference to the profits earned on the branch ; and as there are *ex hypothesi* no profits on the branch (the receipts being all swallowed up in the working expenses), it follows that there can be no rateable value since there is nothing to rate. Now, rateable value is the rent which a tenant

(*a*) Very different considerations may arise if the loss on a branch is contrary to the expectations of the company. The value of a branch is what it is proved to be, not what it was expected to be worth.

(*b*) (1827), 7 B. & C. 236 ; *supra*, p. 341.

from year to year may reasonably be expected to pay, under certain conditions ; and the actual occupier of the branch is a tenant who has taken a lease of it in perpetuity at a rent of 3,000*l.* a year.

Tenancy in perpetuity.—A tenant in perpetuity may well be willing to give a higher or lower rent than a tenant from year to year, according as the value of the property rented is expected to rise or fall, and therefore the rent paid by a tenant in perpetuity is not *necessarily* the rent which a tenant for a year, or from year to year, will pay (*c*). But the hypothetical tenant must be assumed to have a tenancy which is expected to continue for more than a year (*d*). And if the circumstances affecting the value of the property are with good reason expected to remain unchanged, and the conditions of the tenancy are the same, there is little reason why a railway company should be willing to pay more, or less, as a tenant in perpetuity than as a tenant from year to year ; at all events, the rent actually paid by a tenant in perpetuity is strong (if not conclusive) evidence of the rent which a tenant from year to year will pay. In the hypothetical case with which we are dealing, a tenant has actually been found for the branch line who is willing to pay a rent : why is not that rent at least evidence of the rateable value, which is the rent which a tenant may be reasonably expected to pay ? No expectation for the future can surely be more reasonable than that which is justified by existing facts.

Rent, not profits, is the measure of value.—The rate is on the land, not on the profits of the land, and the word “profits” is not found in any of the Acts of Parliament relating to rating. The Acts do not inquire into the object, or motive, of the tenant ; but ask whether there is a reasonable expectation of finding a tenant who will take the land from any motive, and what rent he may reasonably be expected to pay (*e*). We have found a tenant who will take the branch line ; not with the motive of earning profits on the branch line (for there will be no profits earned there), but with the motive of earning profits elsewhere : this tenant will pay a substantial rent, and the branch line will have a rateable value, even though *ex hypothesi* there will be no profits earned thereon.

For the reasons above given it is submitted that it is impossible to support the principle supposed to be laid down in *R. v. Kingswinford* (*f*), viz., that in rating property extending into several

(*c*) *R. v. London and North Western Rail. Co.* (1874), L. R. 9 Q. B. 134, at p. 145 ; *supra*, p. 222.

(*d*) *Vide supra*, p. 162.

(*e*) *Cf. R. v. School Board for London* (1886), 17 Q. B. D. 738, at p. 742 ; *Ryde's Rat. App.* (1886—1890), 235, at p. 240 ; *supra*, pp. 154, 155.

(*f*) (1827), 7 B. & C. 236 ; *supra*, p. 341.

parishes, the profits earned in each parish are the measure of the rateable value in that parish. Further, it is submitted that, even assuming that case to have been rightly decided on the facts found therein, those findings of fact render the case inapplicable to the rating of a branch line of railway. For we have seen (*supra*, pp. 698, 699), that the judgment of BAYLEY, J., is based on the finding that the land used as part of the canal in one parish contributed nothing towards earning the sum derived in another parish from the use of land as a canal there. In other words, the judge, as a finding of fact, negatives the existence of "contributive value." But in the hypothetical case of a branch line, which we have been putting, the branch line in one parish does contribute towards earning the sum derived from the use of the main line in other parishes; and this contribution towards the earnings in other parishes is the very reason why the branch line has been brought into existence, and the existing occupier has become a tenant of it. Surely it cannot be right, in asking what rent a tenant may reasonably be expected to pay for the branch line, to leave out of consideration all the facts which have induced the actual occupier of the branch to become a tenant and pay a rent for it; nor can it be right to bring into account only the absence of profits on the branch, which fact has had so little weight with the actual occupier that (in spite of that absence of profits) he is willing to pay a rent for the branch.

The value of a main line with unprofitable branches.—It has been shown (*supra*, pp. 701, 702), that the "parochial principle" breaks down and is inapplicable when the case of an unprofitable branch line is being considered. But (in the writer's opinion) the necessary corollary of this conclusion is that the "parochial principle" is inapplicable to the case of a profitable main line worked in connection with unprofitable branches, and that the principle is unsound altogether, and can never be applied where the value of, and the profits earned on, a parochial section of a line of railway are not identical; in other words, the "parochial principle" is not applicable, except where it is not wanted. In order to establish the truth of this most heretical doctrine, it will be convenient to reconsider the hypothetical case already put, as to the value of an unprofitable branch line.

We supposed (*supra*, pp. 701, 702), a main line from London to A. with a branch from A. to B., the receipts on the branch being exactly equivalent to the working expenses thereon; and we supposed that although the branch brought the railway company no profits earned on the branch, yet it brought them large profits earned on the main line, and therefore had a value, for which the company as tenants were willing to pay, and did in fact pay a rent.

For the sake of simplicity we assumed that the receipts and the working expenses on the branch were exactly equal : let us now alter the hypothesis, and suppose that the working expenses exceed the receipts on the branch by 1,000*l.* a year. If all the other elements of the calculation made above (*supra*, p. 702), are retained, it is clear that it would still be worth while for the company to pay a rent for the branch line, because the additional net profits on the main line will still leave a good margin after paying the rent, and making good the loss on the branch line. As the actual occupier must be taken into account as a possible hypothetical tenant (*g*), and as he would pay a rent for the branch, it will still have a rateable value, and will be rated at some substantial sum. The question now to be answered is whether, in rating the main line, any deduction is to be made in respect of the loss on the branch? The judges have hitherto answered this question in the negative (*h*) : the writer ventures to say that this decision is wrong.

It is submitted that there is a fallacy concealed in the question, owing to the form in which it has been put to the court, and which has been purposely adopted above. The question says, "Is a deduction to be made in respect of the loss on the branch," but the question does not say *from what* it is sought to make the deduction. The question must, of course, be amplified thus : "in calculating the rateable value of the main line, is any deduction to be made *from the net profits* earned on the main line, in respect of the loss on the branch?" But in *R. v. Great Western Rail. Co.* it seems that, in the judgment of the court, the question was discussed as though it stood thus : "Is any deduction to be made from the *rent* (or rateable value) of the main line, in respect of the loss on the branch?" Lord DENMAN said (*i*) : "If the lessee of a coal mine were to open roads through adjoining lands rented under a separate demise in order to facilitate the access of customers to the mine and so increase its profits, the expense of such roads would certainly not be an outgoing to be allowed for by the overseers." Now, the lessee of a coal mine is rateable *primâ facie* upon his rent, or the royalties payable to the owner, which are merely rent in another form. It is hardly conceivable that a person intending to take a lease of a coal mine would open new roads to it before he secured a lease, and if the rent or royalties were agreed upon before the new roads were opened, the lessor would obviously take, and the mining lessee would give, a lower rent or royalty than would be taken and given after the

(*g*) See *R. v. School Board for London* (1886), 17 Q. B. D. 738 ; Ryde's Rat. App. (1886—1890), 235 ; *supra*, p. 154.

(*h*) See *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 205 ; but see note (*g*), *supra*, p. 202.

(*i*) (1846), 6 Q. B. 179, at p. 206 ; *supra*, p. 203.

access was improved by the opening of the new roads. It would clearly be wrong to make a deduction for expenses of making new roads, from rents or royalties already reduced because the roads were not in existence. But in the hypothetical case of the main line of railway with which we are now dealing, there is nothing to correspond to the rents or royalties paid for a coal mine; and Lord DENMAN (*k*) seems to have confounded a deduction from the hypothetical tenant's income with a deduction from one of his outgoings, viz., from the rent. We are asking what rent a tenant of the main line will be willing to pay, and what he can afford to pay. We start from the gross receipts, in order to estimate the rent; but the rate (as has been already pointed out, *supra*, p. 703), is not on the gross receipts, nor even on the net profits. The determination of the net profits may be a necessary step in the calculation, but net profits (either of the whole line, or any parochial section of the line) are after all merely evidence of the rent which a tenant from year to year may reasonably be expected to give; and it is that rent which represents the rateable value which we are trying to ascertain. Any circumstance which would influence a yearly tenant in fixing the rent for the main line must be taken into consideration in calculating the rateable value of the main line (*l*).

For the sake of simplifying the calculation let us assume that the whole of the main line is in one parish: that all other proper deductions from gross receipts have been made, leaving the net profits (*m*) on the main line at 100,000*l.* per annum. The branch we have assumed (*vide supra*, pp. 702, 705), to be in another parish, and to be worked at a loss of 1,000*l.* per annum; we have also assumed that the company who work both the main line and the branch are tenants of the branch under a lease in perpetuity at 3,000*l.* per annum, and are rated at that sum for the branch. The rating authorities of the parish in which the main line lies contend that no deduction should be made from the net profits of 100,000*l.* earned on the main line, on account of the loss in respect of the branch, and the rent paid for it, relying on *R. v. Great Western Rail. Co.* (*n*). But the answer of the railway company is: "We can only earn the 100,000*l.* net profits on the main line by occupying and working the branch line at a loss: the profits of 100,000*l.* on the main line constitute the only fund out of which we can pay the hypothetical tenant's rent for the branch and for

(*k*) *R. v. Great Western Rail. Co.* (1846), 6 Q. B. 179, at p. 206.

(*l*) See *Cartwright v. Sculcoates Union*, [1899] 1 Q. B. 667, at p. 673, *supra* p. 165.

(*m*) This term is here used for the sake of brevity as representing what is left after deducting the occupier's share (representing interest on tenant's capital, etc.), and after deducting the cost of repairs, etc., of the hereditament.

(*n*) (1846), 6 Q. B. 179; *vide supra*, pp. 202, 203.

the main line, and can make good the loss on the branch. If we are rated at 100,000*l.* for the main line, and at a further sum of 3,000*l.* for the branch, and have to make good a loss of 1,000*l.* on the working of the branch, then, in effect, we are assumed to be able to make payments of 104,000*l.* in all, out of a fund amounting to only 100,000*l.* Again, if a syndicate were to take a transfer of the lease of the branch, and to become tenants under us of the main line, on the same terms as the hypothetical tenant, it is obvious that the syndicate would never pay us the whole of the 100,000*l.* net profits for the main line, without any deduction for the 1,000*l.* lost on the branch line, and the 3,000*l.* rent to be paid for that branch."

Rent of branch, and loss thereon, ought to be deducted.—

It may, at first sight, seem that the calculations suggested in the last paragraph violate the rule that, in calculating rateable value from profits, no deduction must be allowed for rents payable by the actual occupier either for the whole or any part of the hereditament (o). On further examination it will be found that the calculations do not violate the rule.

It will simplify the question if we assume that, for the purposes of one valuation list in which the entire railway appears, the parish containing the branch line is temporarily united with, and made part of, the parish containing the main line. The entire railway being now in one parish, there is no need to separate the assessment of the branch from that of the main line. The company, we have supposed, have a net profit of 100,000*l.* on the main line, and a loss of 1,000*l.* on the branch, or a net profit of 99,000*l.* on the entire railway. The rule above referred to forbids us to make any deduction from the sum of 99,000*l.* on account of the rent of 3,000*l.* paid by the company for the branch, and as we have assumed that there are no other deductions to be made from the 99,000*l.*, that sum is entered in the valuation list as the rateable value of the entire railway (both main line and branch). Now let us assume that, without any alteration in the value of any part of the railway, new valuation lists are rendered necessary, because the parish containing the main line is once more separated from the parish containing the branch. It is now necessary to apportion separate values to the main line and the branch, but as the value of the entire railway is unaltered, the separate assessments of the main line and the branch (if the correct system of apportionment can be ascertained) will together be equal to the single assessment of the entire railway. The branch we have supposed to be let to the company at 3,000*l.* a year, and we assume that this fairly represents its value to the

(o) *Vide supra*, p. 175.

company. If so, 3,000*l.* may fairly be entered in one new valuation list as the rateable value of the branch, leaving 96,000*l.* to be entered in the new valuation list for the other parish as the rateable value of the main line; the two separate assessments being together equal to the single assessment of 99,000*l.*, on the entire railway when comprised in one parish. It now appears that the deduction of 3,000*l.* from the net profits of 100,000*l.* (claimed on account of the rent of 3,000*l.* paid for the branch) is not in effect a deduction from the rateable value of the entire railway; but an apportionment of that rateable value between the two parts of the railway.

The parochial principle unsound in every instance.—It is submitted that the last paragraph proves conclusively that the “parochial principle” (*i.e.*, the principle of ascertaining rateable value solely from the net profits earned in each separate parish) cannot properly be applied to a main line of railway worked at a profit in connection with a branch line worked at a loss. It has already been shown (*supra*, pp. 704—707), that the same principle is unsound when applied to a branch line worked without any profit or at a loss, in connection with a main line worked at a profit which the branch line helps the railway company to earn. If these conclusions are true, it follows that the principle is unsound when applied either to a main line or a branch, if the branch earns a profit (less than that earned on an equal length of the main line), and in addition contributes to the earnings of the main line something which would not be earned if the branch were not worked with the main line. For if, as we have seen (*p*), a branch which earns no profit, or is even worked at a loss, may fairly be rated at a substantial sum, say, 3,000*l.* a year, it cannot be right (when the same branch produces a net profit of, say, 100*l.* a year) to rate that branch merely with reference to the profit actually earned: for such a system would make an increase in the profits of the branch (and, therefore, presumably an increase in the value of the branch) a reason for reducing the rateable value.

The rating of stations and the parochial principle.—In discussing the “parochial principle” as applied to the rating of a line of railway, the rating of the stations has been hitherto purposely left out of consideration; and we have been dealing with the apportionment of the value of the line among the several parishes through which it runs, as though the rateable value of the stations had been already ascertained. An attempt has been made to show that the rateable value of the parochial section of a line of railway cannot properly be determined with reference merely

to the profits earned on that particular section : it is now proposed to show that this conclusion is supported by the principles on which railway stations are rated.

Apart from the question of terminals (*q*) and the rent of bookstalls and similar structures, for which the company is liable to be rated (*r*), the occupation of a railway station is in itself not a source of profit but a burden : the company receive nothing for the use of platforms, booking offices, or waiting rooms. But it has never been suggested that a railway station has no rateable value, because no profit arises from its occupation. A railway company must have stations, and, therefore, may be regarded as willing to pay a rent for them, though they may produce no profit. Here, then, we have a practical and well-recognised illustration of the proposition, which was suggested in dealing with the rating of canals (*s*), that although a trading company occupy the whole of their system for the sake of the profit made over the whole, it does not follow that they occupy each part for the sake of the profits earned on that part. Suppose that a railway company have in one parish nothing but a station (all their lines being in other parishes), and that the station has cost the company 10,000*l.*, and occupies a large area of land, it is impossible to suggest that the property of the company in that one parish has no rateable value. What is the amount of that rateable value it may not be easy to say (*t*), but that the station has some rateable value is manifest. The rateable value of the entire system, consisting of both line and stations, must clearly be limited by the profits which the company can earn over the whole system : for if the company were yearly tenants of the entire system, they would not pay a greater rent than the profits of that system enabled them to pay. If once the rateable value of the entire system be ascertained, the greater the rateable value of the stations the less will be the rateable value of the line, the latter being that which is left after deducting the rateable value of the stations from the value of the entire system. And it is on this principle that the rateable value of railway stations has been invariably treated (*u*).

If, in dealing with one necessary portion of a railway system (*viz.*, a station) which is not in itself a source of profit, it is right (as it clearly is) to assign to that portion some part of the rateable value of the whole, because that portion has a value in contributing to the profits of the whole system, surely in dealing with another necessary portion of the system (*viz.*, a branch) which is not in itself a source of profit, it must equally be right to assign to that branch some part of the rateable value of the whole system, if that

(*q*) These are considered, *supra*, p. 252.

(*r*) *Vide supra*, pp. 199—201.

(*s*) *Vide supra*, p. 698.

(*t*) The question is discussed, *supra*, p. 197.

(*u*) *Vide supra*, pp. 193—195.

branch has a value in contributing to the profits of the whole system. The "parochial principle" of rating a branch line in one parish solely with reference to the profits earned in that parish cannot (it is submitted) be reconciled and brought into harmony with the system of rating stations without any regard to the absence of profits therefrom. And this discrepancy is still more remarkable when the following facts are noticed. The "parochial principle," as applied to a branch line of railway, was supposed to be based on *R. v. Kingswinford* (x) and *R. v. Lower Mitton* (y); and these two cases were cited in argument in *R. v. Great Western Rail. Co.* (z) in support of the contention that in rating a line of railway in one parish, no deduction could be made in respect of the rateable value of stations in another parish. The court overruled the contention, and allowed the deduction in respect of the rateable value of stations, although in the very same case they disallowed the deductions claimed in respect of unprofitable branch lines. It is submitted that this is a discrepancy which it is impossible to reconcile.

(x) (1827), 7 B. & C. 236; *vide supra*, p. 341.

(y) (1829), 9 B. & C. 810; *supra*, p. 338.

(z) (1846), 6 Q. B. 179; *supra*, p. 202.

APPENDIX II.

STATUTES AND STATUTORY ORDERS.

I.—STATUTES.

THE POOR RELIEF ACT, 1601.

(43 [& 44] ELIZ. C. 2.)

An Act for the Relief of the Poor.

BE it enacted by the authority of this present Parliament, that the church-wardens of every parish, and four three or two substantial householders there as shall be thought meet, having respect to the proportion and greatness of the same parish or parishes, to be nominated yearly in Easter week or within one month after Easter, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the same parish or division where the same parish doth lie, shall be called overseers of the poor of the same parish ; and they or the greater part of them shall take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work of the children of all such whose parents shall not by the said churchwardens and overseers or the greater part of them be thought able to keep and maintain their children ; and also for setting to work all such persons married or unmarried having no means to maintain them, use no ordinary and daily trade of life to get their living by ; and also to raise weekly or otherwise, by taxation of every inhabitant parson vicar and other, and of every occupier of lands houses tithes impropriate or appropriations of tithes, coal mines or saleable underwoods (a), in the said parish in such competent sum and sums of money as they shall think fit, a convenient stock of flax hemp wool thread iron and other necessary ware and stuff to set the poor on work ; and also competent sums of money for and towards the necessary relief of the lame impotent old blind and such other among them being poor and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish according to the ability of the same parish ; and to do and execute all other things as well for the disposing of the said stock as otherwise concerning the premises as to them shall seem convenient : which said churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness or other just excuse to be allowed by two such justices of peace or more as is aforesaid, shall meet together at the

Church-wardens and others shall be yearly named overseers of the poor ;

to set poor children, etc., to work ;

and to raise a stock for that purpose ;

and money for relief of impotent poor ; and for apprenticing children ;

shall meet monthly ;

(a) Repealed, as to saleable underwoods, by the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 14, *infra*.

least once every month in the church of the said parish, upon the Sunday in the afternoon after divine service (*b*), there to consider of some good course to be taken and of some meet order to be set down in the premises, and shall within four days after the end of their year and after other overseers nominated as aforesaid, make and yield up to such two justices of peace as is aforesaid a true and perfect account of all sums of money by them received, or rated and sessed and not received, and also of such stock as shall be in their hands or in the hands of any of the poor to work, and of all other things concerning their said office; and such sum or sums of money as shall be in their hands shall pay and deliver over to the said churchwardens and overseers newly nominated and appointed as aforesaid; upon pain that every one of them absenting themselves without lawful cause as is aforesaid from such monthly meeting for the purpose aforesaid, or being negligent in their office or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace or any two of them before mentioned, to forfeit for every such default of absence or negligence twenty shillings.

and shall account yearly, and pay over balance in hand:

Penalty for absence or neglect, 20s.

Justices may make rates in aid of parishes not able to relieve their own poor.

Overseers may levy rates and arrears, etc., by distress, etc.

Justices may commit persons refusing to work; and overseers refusing to account

2. And . . . if the said justices of peace do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, that then the said two justices shall and may tax rate and assess as aforesaid any other of other parishes, or out of any parish within the hundred where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parishes for the said purposes, as the said justices shall think fit, according to the intent of this law: And if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices of peace at their general quarter sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the said county, for the purposes aforesaid, as in their discretion shall seem fit. And that it shall be lawful as well for the present as subsequent churchwardens and overseers or any of them, by warrant from any two such justices of peace as is aforesaid, to levy as well the said sums of money, and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offenders goods, as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus . . . (*c*): and the said justices of peace or any one of them to send to the house of correction or common gaol such as shall not employ themselves to work, being appointed thereunto as aforesaid: and also any two such justices of peace to commit to the said prison every one of the said churchwardens and overseers which shall refuse to account, there to remain without bail or mainprise until he have made a true account and satisfied and paid so much as upon the said account shall be remaining in his hands.

Appeal against rates, etc., to the quarter sessions.

5. Provided always, that if any person or persons shall find themselves grieved with any sess or tax or other act done by the said churchwardens and other persons, or by the said justices of peace, that then it shall be lawful for the justices of peace at their general quarter sessions, or the greater

(*b*) See now 13 & 14 Vict. c. 57, ss. 1—3.

(*c*) See 12 & 13 Vict. c. 14, s. 2, *infra*, p. 731.

number of them, to take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties.

* * * * *

7. And . . . the mayors bailiffs or other head officers of every town and place corporate and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this Act within the limits and precincts of their jurisdictions, as well out of sessions as at their sessions, if they hold any, as is herein limited prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions, to do and execute for all the uses and purposes in this Act prescribed, and no other justice or justices of peace to enter or meddle there ; and every alderman of the city of London within his ward shall and may do and execute in every respect so much as is appointed and allowed by this Act to be done and executed by one or two justices of peace of any county within this realm.

Authority of officers in corporations ;
and of aldermen of London.

8. And . . . if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city town or place corporate, and part without, that then as well the justices of the peace of every county as also the head officers of such city town or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further ; and every of them respectively within their several limits wards and jurisdictions to execute the ordinances before mentioned, concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking accompt of churchwardens and overseers, and the committing to prison such as refuse to accompt, or deny to pay the arrearages due upon their accompts ; and yet nevertheless, the said churchwardens and overseers, or the most part of them of the said parishes that do extend into such several limits and jurisdictions, shall without dividing themselves, duly execute their office in all places within the said parish in all things to them belonging, and shall duly exhibit and make one accompt before the said head officer of the town or place corporate, and one other before the said justices of peace, or any such two of them as is aforesaid.

Proviso where parish extends into two counties, liberties, etc.

* * * * *

THE JUSTICES JURISDICTION ACT, 1742.

(16 GEO. 2, C. 18.)

An Act to empower Justices of the Peace to act in certain Cases relating to Parishes and Places to the Rates and Taxes of which they are rated or chargeable.

WHEREAS doubts have arisen whether, according to the laws and statutes now in force, his Majesty's justices of the peace may lawfully act in any case relating to the parishes or places to the rates and taxes of which such justices respectively are rated or chargeable : May it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that it shall

Preamble.

Justices may enforce the laws relating to parish taxes, etc., though they are chargeable themselves.

and may be lawful to and for all and every justice or justices of the peace, for any county, riding, city, liberty, franchise, borough, or town-corporate within their respective jurisdictions to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, for passing and punishing vagrants, for repair of the highways, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid.

2. [*Repealed*, 30 & 31 Vict. c. 59.]

Proviso.

3. Provided always, . . . that this Act, or any thing therein contained, shall not authorise or empower any justice or justices of the peace for any county or riding at large to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid, any thing herein contained to the contrary in any wise notwithstanding.

THE POOR RATE ACT, 1743.

(17 GEO. 2, c. 3.)

An Act to oblige Overseers of the Poor to give public Notice of Rates made for the Relief of the Poor, and to produce the same.

Preamble, reciting the Act, 43 Eliz. c. 2.

WHEREAS great inconveniences do often arise in cities, towns corporate, parishes, townships, and places by reason of the unlimited power of the churchwardens and overseers of the poor, who frequently, on frivolous pretences and for private ends, make unjust and illegal rates in a secret and clandestine manner, contrary to the true intent and meaning of a Statute made in the forty and third year of the reign of Queen Elizabeth, intituled "An Act for the relief of the poor : " For remedy whereof, and preventing the like abuses for the future, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and forty-four. the churchwardens and overseers, or other persons authorised to take care of the poor in every parish, township, or place, shall give or cause to be given public notice in the church (*d*) of every rate for the relief of the poor, allowed by the justices of peace, the next Sunday after the same shall have been so allowed ; and that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given.

Poors rates to be published in the church.

2. And . . . the churchwardens and overseers of the poor or other persons authorised as aforesaid, in every parish, township, or place, shall

The rates to be inspected by any inhabitant and copies taken.

(*d*) See now 7 Will. 4 & 1 Vict. c. 45, *infra*, p. 726.

permit all and every the inhabitants of the said parish, township, or place to inspect every such rate at all seasonable times, paying one shilling for the same, and shall, upon demand, forthwith give copies of the same, or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of six pence for every twenty-four names.

3. And . . . if any churchwarden or overseer of the poor or other person authorised as aforesaid shall not admit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden or overseer or other person authorised as aforesaid, for every such offence shall forfeit and pay to the party aggrieved, the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed.

Penalty on not permitting any inhabitant to inspect, etc.

THE POOR RELIEF ACT, 1743.

(17 GEO. 2, c. 38.)

An Act for remedying some Defects in the Act made in the Forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor."

4. And . . . in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of his Majesty's justices of the peace, it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise where such parish, township, or place lies; and the justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same; and the said justices may award and order to the party for whom such appeal shall be determined, reasonable costs, in the same manner that they are impowered to do in case of appeals concerning the settlement of poor persons, by an Act made in the eighth and ninth years of King William the Third, intituled "An Act for supplying some defects in the laws for the relief of the poor of this kingdom."

Persons aggrieved may appeal to quarter sessions.

5. Provided always, that in all corporations or franchises, who have not four justices of the peace, it shall and may be lawful for any person or

Proviso for corporations, etc.

persons, in any of the cases aforesaid where an appeal is given by this Act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate (*e*).

6. And whereas it hath been held, that upon appeals from rates and assessments, the justices of the peace may not only quash the old rates, but make new rates and assessments, from which no appeal can be had (*f*) : Be it enacted by the authority aforesaid, that upon all appeals from rates and assessments, the justices of the peace (where they shall see just cause to give relief) shall and are hereby required to amend the same, in such manner only as shall be necessary for giving such relief, without altering such rates or assessments with respect to other persons mentioned in the same ; but if upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then and in every such case the said justices shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly.

How far
justices shall
give relief
on appeals.

Clause
relating to
warrants of
distress.

7. And for the more effectual levying money assessed for the relief of the poor, be it enacted by the authority aforesaid, that the goods of any person assessed, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct : and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant) such goods may be levied in such other county or precinct by virtue of such warrant and certificate ; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.

Appeal to
quarter
sessions.

Clause to
prevent
vexatious
actions
against
overseers.

8. And to prevent all vexatious actions against overseers of the poor, be it enacted by the authority aforesaid, that where any distress shall be made for any sum or sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers, on account of any defect or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon ; nor shall the party or parties distraining be deemed a trespasser or trespassers ab initio, on account of any irregularity which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs.

* * * * *

(*e*) See also 1 Geo. 4, c. 36, *infra*, p. 722.

(*f*) See *St. Leonard's, Shoreditch, Case* (1698), 1 Const. 271 ; *R. v. Shrewsbury JJ.* (1734), 2 Str. 975.

11. And . . . in case any person or persons shall refuse or neglect to pay to such overseers as aforesaid any sum or sums of money that he, she, or they shall be legally rated or assessed to, it shall and may be lawful to and for the succeeding overseers and they are hereby required to levy such arrears and out of the money so levied to reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be due to them in their accounts as aforesaid.

12. [*Repealed, 32 & 33 Vict. c. 41, s. 16, infra.*]

13. And . . . true and just copies of all rates and assessments hereafter to be made for the relief of the poor, be fairly wrote and entered in a book or books to be provided for that purpose by the churchwardens and overseers of the poor of every parish, township, or place, who shall take care that such copies be wrote and entered accordingly, within fourteen days after all appeals from such rates are determined, and shall attest the same by putting their names thereto; and all and every such book or books shall be carefully preserved by the churchwardens and overseers of the poor for the time being, or one of them, in some public or other place in every such parish, township, or place, whereto all persons assessed, or liable to be assessed, may freely resort, and shall be delivered over from time to time to the new and succeeding churchwardens and overseers of the poor as soon as they enter into their said offices, to be preserved as aforesaid, and shall be produced by them at the general or quarter sessions, when any appeal is to be heard or determined.

Copies of rates to be entered in a book,

to be kept for public perusal.

14. And . . . if any churchwarden, overseer of the poor, or other officer of any parish, township, or place, shall neglect or refuse to obey and perform the several orders and directions of this Act, or any of them, where no penalty is before provided by this Act, or shall act contrary thereto, every such churchwarden, overseer of the poor, or other officer so offending in the premises, shall for every such offence, on oath thereof made within two calendar months after the offence committed, before any two or more of his Majesty's justices of the peace, forfeit, for the use of the poor of such parish, township, or place, a sum not exceeding five pounds, nor less than twenty shillings, to be levied by distress and sale of the offender's goods, by warrant from such justices, which sum shall be paid to some churchwarden or overseer of the poor of such parish, township, or place, for the purpose aforesaid.

Penalty on parish officers not obeying this Act.

15. And . . . overseers of the poor, within every township or place where there are no churchwardens, shall from time to time do, perform, and execute all and every the acts, powers, and authorities concerning the relief of, and other matters and things relating to the poor, as churchwardens and overseers of the poor may do, perform, and execute by this Act, or any former statute concerning the poor, and shall lose, forfeit, and suffer all such pains and penalties for neglect, abuse, or nonperformance thereof, as churchwardens and overseers of the poor are liable to by virtue of this or any former statute concerning the poor.

Power of overseers where there are no churchwardens.

THE POOR RATE ACT, 1801.

(41 GEO. 3, c. 23.)

An Act for the better Collection of Rates made for the Relief of the Poor.

[18th April 1801.]

WHEREAS by an Act of Parliament, made and passed in the seventeenth year of the reign of his late Majesty King George the Second, intituled "An Act for remedying some Defects in the Act, made in the forty-third year of the reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor,'" power was given to justices of the peace, upon appeals from rates and assessments, where they should see just cause to give relief, to amend the same in such manner only as should be necessary for giving such relief, without altering such rates or assessments with respect to other persons mentioned in the same : And whereas the quashing or setting aside of rates or assessments made for the relief of the poor, is attended with great inconvenience ; and it hath happened, in consequence of the rate or assessment being quashed or set aside, or of notice of appeal against the whole rate being given, the churchwardens and overseers of the poor have not had any money in hand for the relief and maintenance of the poor : For remedy whereof, may it please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, upon all appeals from any rate or assessment made for the relief of the poor of any parish, township, vill, or place, the court of general or quarter sessions of the peace shall, and such court is hereby authorised and required (in all cases where they shall see just cause to give relief) to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any person or persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment : Provided always, that if the said court shall be of opinion that it is necessary, for the purpose of giving relief to the person or persons appealing, that the rate or assessment should be wholly quashed, then the said court may quash the same ; but nevertheless, all and every the sum and sums of money in and by such rate or assessment charged on any person or persons, shall and may be levied and recovered by such ways and means, and in such and the same manner, as if no appeal had been made against such rate or assessment ; and all and every the sum and sums of money which any person or persons charged in such rate or assessment shall pay, or which shall be levied upon or recovered from him, her, or them, shall be deemed and taken as payments on account of the next effective rate or rates, assessment or assessments, which shall be made for the relief of the poor of the same parish, township, vill, or place.

Recital of
17 Geo. 2,
c. 38.

On appeal
from any
poor rate,
the quarter
sessions may
amend it
without
quashing it ;
or, if neces-
sary, may
quash the
rate, but the
sum assessed
shall not-
withstanding
be levied.

Notice of
appeal not
to prevent
distress being
made for the
recovery of

2. And . . . from and after the passing of this Act, all and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding

the person or persons so rated or assessed, or any other person or persons, the rate, shall have given notice of appeal from or against such rate or assessment, for any cause whatsoever : Provided always, that if any person, rated or assessed in any rate or assessment made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned to the churchwardens and overseers of the poor of any parish, township, vill, or place, or any two of them, then, from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum or sums of money from such person or persons, than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place.

3. And . . . in case the said court of general or quarter sessions of the peace shall upon appeal order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order that any sum or sums of money, in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums, not to be paid ; and then and in every such case no proceedings shall, after making such order, be commenced, or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid as aforesaid : Provided always, that no justice of the peace, constable, or other officer of the peace or other person shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing which such justice, constable, or other officer or person shall have granted, made, executed, or done for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing of the order for the non-payment of such sum or sums of money, which the said court is hereby authorised to make as aforesaid.

Quarter sessions having ordered a rate to be quashed, may order the sum charged on any person not to be paid, and stop proceedings for the recovery thereof, etc

4. And . . . from and after the passing of this Act, all notices of appeal from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney, on his, her, or their behalf ; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them, and the particular causes or grounds of appeal shall be stated and specified in such notice ; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter sessions to which such appeal shall be made, shall not examine or inquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal.

Notices of appeal to be given to churchwardens and overseers of the poor, etc., and grounds of appeal stated in such notices

5. Provided nevertheless, . . . that with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing ; and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or misstated in such written notice, where any notice shall have been given in writing.

Appeals may be decided if the parties consent, although notice be not given, or on grounds not stated in notice.

Persons appealing against any rate, shall give notice, not only to the churchwardens, etc., but also to the persons interested, etc.

6. And . . . from and after the passing of this Act, if any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she, or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her, or them to be therein rated and assessed at any sum or sums of money, or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered, in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to or alter the rate or assessment accordingly.

The rate as altered by the quarter sessions to be recovered in the same manner as the original rate.

7. And . . . if upon the hearing of any appeal from or against any rate or assessment, the said court shall order the name or names of any person or persons to be inserted therein, and him, her, or them to be rated or assessed at any sum or sums of money, or shall order the sum or sums at which any person or persons is or are therein rated or assessed to be raised or increased, then and in such case all and every the sum and sums of money, at or to which such person or persons shall be so ordered to be rated or assessed, or to be raised or increased, or so much thereof as shall not have been already paid, shall and may be recovered in such and the same manner, and by such and the same means, as if he, she, or they had been originally named in such rate or assessment, and rated or assessed therein at such sum or sums of money.

In case in the rate the name of any person shall be struck out, or any sum lowered, the quarter sessions shall order any sums paid in excess to be repaid.

8. And . . . if upon the hearing of any appeal from any rate or assessment for the relief of the poor, the court of general or quarter sessions of the peace shall order the name or names of any person or persons to be struck out of such rate or assessment, or the sum or sums rated or assessed on any person or persons to be decreased or lowered, and if it shall be made appear to the said court that such person or persons hath or have, previously to the hearing of such appeal, paid any sum or sums of money, in consequence of such rate or assessment, which he, she, or they ought not to have paid or been charged with, then and in every such case the said court shall order all and every such sum and sums of money to be repaid and returned, by the said churchwardens and overseers of the poor, to the person or persons having paid the same respectively, together with all reasonable costs, charges, and expenses, occasioned by such person or persons having paid or been required to pay the same; and all and every the sum and sums of money so

ordered to be repaid or returned by the churchwardens and overseers of the poor, or any of them, shall and may, together with all such costs, charges, and expenses as aforesaid, be levied and recovered from them, or any of them, by distress and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor, can or may be by law levied or recovered. S. L. R.

9. [*Repealed, 35 & 36 Vict. c. 63.* S. L. R.]

THE POOR RELIEF ACT, 1814.

(54 GEO. 3, c. 170.)

An Act to repeal certain Provisions in Local Acts for the Maintenance and Regulation of the Poor; and to make other Provisions in relation thereto.

[30th July 1814.]

* * * *

11. And . . . it shall and may be lawful for any two or more of his Majesty's justices of the peace acting for the county, riding, division, or jurisdiction, in which any district, parish, township, or hamlet shall be situated, in petty sessions assembled, on application made to them by any person rated to any rates or cesses within any such district, township, parish, or hamlet to be discharged therefrom, and proof of his or her inability through poverty to pay such rate or cess, with the consent of the churchwardens and overseers of such district, parish, township, or hamlet, or of such other person or persons as is or are competent to act under the authority of any Act or Acts of Parliament for the ordering, management, controul, or direction of the poor of any such district, parish, township, or hamlet, to order and direct that such person shall be excused from the payment of such rate or cess, and to strike out his or her name therefrom; and the sum at which such person was so rated in such rate or cess shall not thereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same.

Justices in petty sessions, with consent of parish officers, may discharge poor persons from the payment of parish rates.

12. And . . . the goods and chattels of any person or persons neglecting or refusing to pay any sum or sums of money legally assessed on and due from him, her, or them in respect of any rate for the relief of the poor, church cess, or highway cess of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, her, or them, shall and may be distrained, not only within such district, parish, township, or hamlet, but also within any other district, parish, township, or hamlet within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then upon oath thereof made before any one or more justice or justices of the peace of any other county, riding, division, or jurisdiction in which any of the goods or chattels of such persons shall be found, which oath such justice or justices are hereby required to administer and certify by indorsing, in his or their respective handwriting, his or their name or names on the warrant granted to make such distress, the goods and chattels of the said person or persons so neglecting or refusing to pay as aforesaid shall be subject and liable to such distress and sale in such other county, riding,

Goods of persons neglecting to pay poor rate, etc., may be distrained in other parishes of the county, and for want of sufficient distress in the county, in another county.

division, or jurisdiction where the same shall be found, and may by virtue of such warrant and certificate be distrained and sold in the same manner as if the same had been found within the district, parish, township, or hamlet, in or for which such rate or cess had been made or was due.

THE POOR LAW (APPEALS) ACT, 1820.

(1 GEO. 4, c. 36.)

An Act for allowing Appeals from Towns Corporate and Franchises, in certain Cases, to the General or Quarter Sessions of the Peace of the Counties in which they are situate. [8th July 1820.]

Appeal to quarter sessions of county, etc., where any corporation, etc., has not more than six justices nor two parishes, etc., within it.

WHEREAS by an Act made in the seventeenth year of the reign of his late Majesty King George the Second, intituled an Act for remedying some defects in the Act made in the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor," it is amongst other things provided, that in all corporations or franchises which have not four justices of the peace, it shall and may be lawful for any of the person or persons, in any of the cases mentioned or referred to by the said Act, where power of appeal is given, to appeal, if he or they shall think fit, to the next general quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate : and whereas it would conduce to the more equal and impartial administration of justice, if such power of appeal were extended : Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, in all corporations and franchises not having more than six justices of the peace, nor having jurisdiction or authority over two or more whole parishes or wards contained within such corporation or franchise, it shall and may be lawful for any person or persons, in any of the cases mentioned or referred to by the said Act or Acts, or either of them, where an appeal is given by the said Act or Acts, or either of them, to appeal, if he, she, or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate, in as ample manner as if such corporation or franchise had not four justices of the peace : Provided always, that nothing herein contained shall be deemed or taken to extend to any city or town corporate, being a county of itself.

THE POOR RATE EXEMPTION ACT, 1833.

(3 & 4 WILL. 4, c. 30.)

An Act to exempt from Poor and Church Rates all Churches, Chapels, and other Places of Religious Worship. [24th July 1833.]

No persons shall be rated to church or poor rates for churches or places exclusively appropriated

[1.] No person or persons shall be rated or shall be liable to be rated or to pay to any church or poor rates or cesses, for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the established church) shall be duly certified for the performance of such religious

worship according to the provision of any Act or Acts now in force : Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage.

2. Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor.

to public religious worship, and duly certified.
Persons not to be liable to rates because premises are used for Sunday schools, etc.

THE PAROCHIAL ASSESSMENTS ACT, 1836.

(6 & 7 WILL. 4, c. 96.)

An Act to Regulate Parochial Assessments.

[19th August 1836.]

This section repealed as to Metropolis (g). [1. No rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto ; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent : Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.]

All rates to be made on the net annual value of the property.

This section repealed as to Metropolis (g). [2. Every such rate made shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to this Act annexed, so far as the same can be ascertained ; and the churchwardens and overseers or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form (h) ; and otherwise the said rate shall be of no force or validity (i) : Provided always, that nothing herein contained shall be construed to prevent the owners of tenements from compounding for the rates to be assessed on the same, in such manner as they were by any statute or statutes enabled to do before the passing of this Act, so that the gross estimated rental of the hereditaments compounded for be entered on the rate in the proper column.]

Rates to be made in a given form.

Nothing herein to prevent owners from compounding for rates.

(g) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

(h) See now 25 & 26 Vict. c. 103, s. 28, and Schedule, *infra*, pp. 749, 754.

(i) These words apply only to the signing of the declaration ; see *R. v. Fordham* (1839), 11 A. & E. 73.

Power to order new survey and valuation.

3. When it shall be made to appear to the Poor Law Commissioners, by representation in writing from the board of guardians of any union or parish, under their common seal, or from the majority of the churchwardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, and to direct such guardians to appoint a fit person or persons to make and take every such survey, map or plan, and valuation, and to make provision for paying the costs of every such survey, map or plan, and valuation, either by a separate rate, or by a charge on the poor rates, as they may see fit; but in case of such charge being made, then provision shall be made for paying off not less than one fifth of the sum charged on the rates, and such interest as may from time to time be payable in respect of such charge or any part thereof, in each succeeding year, till the whole is repaid.

Power for surveyors to enter and examine lands, etc., for purposes of survey and plans.

4. For the purpose of making every such survey, map, or plan, and valuation, it shall be lawful for the person or persons so to be appointed for making the same respectively, together with their and every of their assistants and servants, at all reasonable times, until the same respectively shall be completed, to enter, view, and examine, survey, and admeasure, all and every part of the messuages, lands, and other hereditaments aforesaid, and to do or cause to be done any act or thing necessary for making such survey, map or plan, and valuation: Provided always, that any map, survey, plan, or valuation made previously to the appointment of such person or persons, which shall be tendered to him or them, and which shall be in his or their judgment and to his or their satisfaction a just and true map or survey, proper for the purposes aforesaid, may be used for such purposes.

Power to take copies or extracts of rates gratis.

5. It shall be lawful for any person or persons rated to the relief of the poor of the parish in respect of which any rate shall be made, at all seasonable times, to take copies thereof or extracts therefrom without paying anything for the same, anything in any Act of Parliament to the contrary notwithstanding: and in case the person or persons having the custody of such rate shall refuse to permit or shall not permit such person or persons so rated as aforesaid to take copies thereof or extracts therefrom, the person or persons so refusing or not permitting such copy or extract to be made shall forfeit and pay any sum not exceeding five pounds, to be recovered in a summary way before any justice of the peace having jurisdiction in the parish or place.

Penalty for refusal to permit.

Justices acting in petty sessions to hold four special sessions in the year to hear appeals.

This section repealed as to Metropolis (k).

[6. The justices acting in and for every petty sessions division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the

(k) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

parish church of the said parishes, twenty-eight days at the least before the holding of the same ; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit ; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days after the same shall have been made cause notice to be given in writing of his, her, or their intention of appealing against such decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justices of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof ; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever : Provided always, that no such objection shall be inquired into by the said justices in special session unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made : Provided also, that the said justices in special session shall not be authorised to inquire into the liability of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same shall have been rated.]

This section repealed as to Metropolis (l).

[7. The justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of

the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted : Provided always, that no order of the said justices shall be removed by certiorari or otherwise into any of his Majesty's courts of record at Westminster : Provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions : Provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.]

8. This Act shall extend only to England and Wales.

(l) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

Justices may act with all the powers of justices in quarter sessions.
Proviso.
Act confined to England and Wales.

[Sect. 2.]

SCHEDULE to which this Act refers.

Form of Rate (m).

An Assessment for the relief of the poor of the parish of Merton in the county of Surrey, and for other purposes chargeable thereon according to law, made this thirtieth day of March in the Year of our Lord One thousand eight hundred and thirty-seven, after the rate of sixpence in the pound.

No.	Arrears due or if excused.	Name of Occupier.	Name of Owner.	Description of Property Rated.	Name or Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value.	Rate at 6d. in the Pound.
1	£ s. d.	James Smith	John Green	Land and buildings	Whiteacre farm	A. R. P. 40 0 0	£ s. d. 60 0 0	£ s. d. 55 0 0	£ s. d. 1 7 6
2	- -	Ditto	Ditto	House and garden	In West Street	0 1 0	30 0 0	25 0 0	0 12 6
3	- 7½ } excused	John Poor	Ditto	House	In Brick Lane	- -	1 10 0	1 5 0	0 0 7½
etc.	etc.	etc.	etc.	- etc.	etc.	etc.	etc.	etc.	etc.

Declaration of Overseers and Churchwardens (n).

We,

do declare the several particulars specified in the respective columns of the above rate to be true and correct, so far as we have been able to ascertain them, to which end we have used our best endeavours.

THOMAS JONES, Overseer.

JOHN THOMAS, [Churchwarden, etc., etc.]

THE PARISH NOTICES ACT, 1837 (o).

(7 WILL. 4 & 1 VICT. c. 45.)

An Act to alter the Mode of giving Notices for the holding of Vestries, of making Proclamations in Cases of Outlawry, and of giving Notices on Sundays with respect to various Matters.

[12th July 1837.]

Notices not to be given in churches during divine service, etc.

[1.] . . . No proclamation or other public notice for a vestry meeting or any other matter shall be made or given in any church or chapel during or after divine service, or at the door of any church or chapel at the conclusion of divine service.

Notices heretofore usually given during or after divine service, etc., to be affixed to the church doors.

2. All proclamations or notices, which under or by virtue of any law or statute or by custom or otherwise have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing, and copies thereof either in writing or in print, or partly in writing and partly in print, shall, previously to the commencement of divine service on the several days on which such proclamations or notices have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place; and such notices when so affixed shall be in lieu of and as a substitution for the several proclamations and notices so heretofore given as aforesaid, and shall be good, valid, and effectual to all intents and purposes whatsoever.

(m) See now Schedules Y, and Y 2, in the Agricultural Rates Order, 1896, *infra*.

(n) See now 25 & 26 Vict. c. 103, s. 28, and Schedule, *infra*, pp. 749, 754.

(o) This Act may also be cited as "The Vestries Act, 1837"; see the Short Titles Acts of 1892, and 1896 (55 & 56 Vict. c. 10; 59 & 60 Vict. c. 14).

THE POOR RATE EXEMPTION ACT, 1840.

(3 & 4 VICT. c. 89.)

An Act to exempt, until the Thirty-first Day of December One thousand eight hundred and forty-one, Inhabitants of Parishes, Townships, and Villages from Liability to be rated as such, in respect of Stock-in-Trade or other Property, to the Relief of the Poor.

[10th August 1840.]

[1.] It shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor : Provided always, that nothing in this Act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, to be taxed under the provisions of the said Acts for and towards the relief of the poor.

Stock-in-trade, etc., not to be rated.

2. And be it enacted, that this Act shall be in force till the thirty-first day of December in the year of our Lord one thousand eight hundred and forty-one, and that from the said thirty-first day of December this Act, and all the provisions herein-before contained, shall absolutely cease and be of no effect (*p*).

Duration of Act.

THE SCIENTIFIC SOCIETIES ACT, 1843.

(6 & 7 VICT. c. 36.)

An Act to exempt from County, Borough, Parochial, and other local Rates, Land and Buildings occupied by Scientific or Literary Societies.

[28th July 1843.]

[1.] No person or persons shall be assessed or rated, or liable to be assessed or rated, or liable to pay, to any county, borough, parochial, or other local rates or cesses, in respect of any land, houses, or buildings, or parts of houses, or buildings, belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes, provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members, and provided also that such society shall obtain the certificate of the barrister-at-law or lord advocate, as herein-after mentioned.

Scientific, etc., societies, supported by voluntary contributions and dividing no profits, exempted from rates upon obtaining the certificate hereinafter mentioned.

2. Provided always, that before any society shall be entitled to the benefit of this Act such society shall cause three copies of all laws, rules, and regulations for the management thereof, signed by the president or other chief officer and three members of the council or committee of management and countersigned by the clerk or secretary of such society, to be submitted, in England, Wales, and Berwick-upon-Tweed to the barrister-at-law for the time being appointed to certify the rules of friendly societies there, and in

Such societies to cause three copies of their rules of management to be submitted to the barrister or person appointed to certify the rules of friendly societies, who shall certify

(*p*) Continued from time to time by "Expiring Laws Continuance Acts": see 3 Edw. 7, c. 40. But s. 2 was repealed by 37 & 38 Vict. c. 96 (S. L. R.).

thereon that that society is entitled to exemption, or state his ground for withholding his certificate. One certified copy to be returned to the society; one to be retained by the barrister; and the third transmitted to the clerk of the peace, for confirmation at sessions, and to be deposited.

Scotland to the lord advocate, or any deputy appointed by him to certify the rules of friendly societies there, and in Ireland to the barrister for the time being appointed to certify the rules of friendly societies there, for the purpose of ascertaining whether such society is entitled to the benefit of this Act; and such barrister or lord advocate, as the case may be, shall give a certificate on each of the said copies that the society so applying is entitled to the benefit of this Act, or shall state in writing the grounds on which such certificate is withheld; and one of such copies, when certified by such barrister or lord advocate, shall be returned to the society, another copy shall be retained by such barrister or lord advocate, and the other of such copies shall be transmitted by such barrister or lord advocate to the clerk of the peace for the borough or county where the land or buildings of such society in respect of which such exemption is claimed shall be situated, and shall by him be laid before the recorder or justices for such borough or county at the general quarter sessions, or adjournment thereof, held next after the time when such copy shall have been so certified and transmitted to him as aforesaid and the recorder or justices then and there present are hereby authorised and required, without motion, to allow and confirm the same; and such copy shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without fee or reward (*q*).

Certain alterations made in the rules to be certified and deposited in like manner.

3. If the laws, rules, and regulations of any such society shall be altered, so as to affect or relate to the property or constitution of such society, such alterations shall, within one calendar month after the same shall have been made, be submitted to such barrister or lord advocate, and such barrister or lord advocate shall certify as aforesaid; and such rules, when so certified, shall be filed with the clerk of the peace as aforesaid; and in the meantime such society shall be entitled to the benefit of this Act, as if no such alterations had been made: Provided always, that if the said barrister or lord advocate shall refuse to certify, that then, subject to such appeal as is herein-after provided, the said society shall cease to be entitled to the benefit of this Act from the time when such alterations shall come into operation.

In case of refusal to certify, society to cease to be entitled to exemption.

Fee to barrister, etc., to be paid, with expense of transmission of rules, by society.

4. Provided always, that the fee payable to such barrister or lord advocate for perusing the laws, rules, and regulations of each society, or the alterations made therein, and giving such certificate or statement as aforesaid, shall not at any one time exceed the sum of one guinea, which, together with the expense of transmitting the rules to and from the said barrister or lord advocate, shall be defrayed by each society respectively.

Reference to quarter sessions where certificate is refused.

5. Provided always, that in case any such barrister or lord advocate shall refuse to certify that any such society is entitled to the benefit of this Act, it shall then be lawful for any such society to submit the laws, rules, and regulations thereof to the court of quarter sessions for the borough or county where the land or buildings of the society shall be situated, together with the reasons so assigned by the said barrister or lord advocate as aforesaid; and the recorder or justices at such quarter sessions shall and may, if he or they think fit, order the same rules to be filed, notwithstanding such refusal as aforesaid; and such filing shall have the same effect as if the said barrister or lord advocate had certified as aforesaid (*q*).

Appeal to quarter sessions by

6. Provided also, that any person or persons assessed to any rate from which any society shall be exempted by this Act may appeal from the

decision of the said barrister or lord advocate in granting such certificate as any person assessed to the said court of quarter sessions within four calendar months next after the first assessment of such rate made after such certificate shall have been filed as aforesaid, or within four calendar months next after the first assessment of such rate made after such exemption shall have been claimed by such society, such appellant first giving to the clerk or secretary of the society in question, twenty-one days previously to the sitting of the said court, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds thereof, and within four days after such notice entering into a recognizance before some justice, with two sufficient sureties, to try such appeal at and abide the order of and pay such costs as shall be awarded by the recorder or justices at such quarter sessions ; and at such quarter sessions such recorder or justices shall, on its being proved that such notice and statement have been given as aforesaid, proceed to hear such appeal, according to the grounds set forth in such statement, and not otherwise, and, if the certificate of the said barrister or lord advocate shall appear to him or them to have been granted contrary to the provisions of this Act, shall and may annul the same, and shall and may, according to their discretion, award such costs to the party appealing or appealed against as he or they shall think proper, and his or their determination concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever (r).

any person assessed to any rate from which any society is exempted against decision of barrister, etc., granting certificate.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 18.)

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a Public Nature.

[8th May 1845.]

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works ; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act ; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively ; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

Until completion of works, promoters shall make good any deficiency of land tax and poor's rate caused by lands being taken.

Land tax may be redeemed.

(r) *Vide supra*, p. 103.

THE POOR LAW AUDIT ACT, 1848.
(11 & 12 VICT. c. 91.)

An Act to make Provision for the Payment of Parish Debts, the Audit of Parochial and Union Accounts, and the Allowance of certain Charges therein. [31st August 1848.]

Debts of
overseers.

[1.] If the overseers of the poor in any parish shall lawfully, by virtue of their office, contract any debt on account of the parish within three months prior to the termination of their year of office, and the same shall not have been discharged by them before their year of office shall have determined, such debt shall be payable by and recoverable from their immediate successors in office, and chargeable upon the poor rate of the said parish, in like manner as the same would have been payable and chargeable by such first-mentioned overseers during their year of office ; and if any such debt shall have been contracted during their year of office, but more than three months prior to its termination, the same shall be payable by and recoverable from their immediate successors in office, if the ratepayers of the parish in vestry assembled, and the Commissioners for administering the Laws for Relief of the Poor in England, shall consent, but not otherwise.

Provision for
payment of
bills of costs
for legal pro-
ceedings.

2. Provided nevertheless, that where any proceedings . . . shall be hereafter carried on, for or on behalf of any parish, in a court of law, regarding any matter affecting the poor rates of such parish, it shall not be necessary that the bill of costs of the solicitor engaged therein shall be paid before the termination of the proceedings, but in any such case the amount of the bill, when duly taxed, if otherwise chargeable against the parish, shall be payable out of the poor rates within the space of one year next following the termination of the proceedings, but not afterwards, unless the commissioners aforesaid shall by their order authorise the payment of the costs and expenses attending any such proceedings by annual instalments, not exceeding five, to commence from such termination.

* * * * *

THE POOR LAW AMENDMENT ACT, 1848.
(11 & 12 VICT. c. 110.)

An Act to alter the Provisions relating to the Charges for the Relief of the Poor in Unions. [4th September 1848.]

* * * * *

Valuation
of property
alleged to
be rateable.

7. The guardians of any union may, on the application of the major part of the overseers of any parish comprised in it, or of any person assessed to the poor rate in any such parish, cause a valuation to be made at any time of any property alleged to be rateable to the relief of the poor, being a part only of the rateable property of such parish, and may charge the expenses of such valuation to the overseers of such parish, or to such person so applying as aforesaid.

* * * * *

THE DISTRESS FOR RATES ACT, 1849.

(12 & 13 VICT. c. 14.)

An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of Distraining for Rates.

[11th May 1849.]

[1.] It shall be lawful hereafter for all justices of the peace, if in their discretion they shall so think fit, in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor, or for the highways, in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs (*s*) and expenses which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges (*t*) of the taking, keeping, and selling of the said distress.

Costs of obtaining warrant of distress for poor rate.

2. [*Recital of 43 Eliz. c. 2, s. 2*] . . . when to any warrant of distress for the levying of any sum or sums to which any person or persons may hereafter be rated or assessed in or by any rate or assessment hereinbefore mentioned it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the Form (D.) in the schedule to this Act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment made or issued for default of distress as aforesaid shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison, (the amount of such several costs, expenses, and charges being stated in such warrant of commitment,) as for the non-payment of the sum or sums alleged to be due for the said rates respectively.

In default of distress for non-payment of rates, justices may issue warrant of commitment.

3. For the saving of expense in the levying of any sum or sums for rate and costs as aforesaid it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed; but nothing herein

One warrant of distress may be issued against any number of persons.

(*s*) See further as to costs, 39 & 40 Vict. c. 61, s. 31.

(*t*) See *Hill v. Pannifer* (1904), 20 T. L. R. 324.

shall be deemed or construed to authorise justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid.

To whom warrants shall be directed.

4. The warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the highways, respectively, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

Summons for non-payment of rate.

5. Every summons to be issued against any person for nonpayment of any sum for which he or she is or shall be so rated or assessed as aforesaid shall be directed to such person, and may be in the Form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally, or by leaving the same with some person for him or her at his or her last place of abode: and the person who shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose, if necessary, to the service of the said summons; and if upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace, in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner, to all intents and purposes, as if such party had personally appeared before them in obedience to the said summons.

On payment of rate and costs, proceedings to cease.

6. In all cases where any proceedings shall be taken to compel payment of any sum for which any such person shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for nonpayment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels or no sufficient goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or to the surveyor of highways, respectively, or other person authorised to collect or receive such rate, the sum so sought to be recovered, together with the amount of all costs and expences up to that time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken.

* * * * *

Forms in schedule valid.

8. The forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

* * * * *

Made and exhibited before me _____,)
 at _____, in the county of _____, on)
 this _____ day of _____, 1849.)
 _____ E. F.

(B.)

[Sect. 5.]

*Summons upon the Complaint.*To *A. B.*, of

WHEREAS complaint hath this day been made before the undersigned, [*one*] of her Majesty's justices of the peace in and for the [*county*] of , by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of , in the said [*county*], that you, being a person duly rated and assessed to [the relief of the poor, *or* the maintenance of the highways] of the said parish, in and by a rate made on the day of , 1849, in the sum of , hath not paid the same or any part thereof, but hath refused so to do : These are therefore to command you, in her Majesty's name, to be and appear on , at o'clock in the forenoon, at , before such two or more justices of the peace for the said [*county*] as may then be there, to show cause why you have not paid and refuse to pay the same, otherwise you shall be proceeded against by default as if you had appeared, and be dealt with according to law.

Given under my hand and seal, this day of , in the year of our Lord , at , in the [*county*] aforesaid.

E. F.

Take notice, that you have already incurred the undermentioned costs ; viz. :

	<i>s.</i>	<i>d.</i>
Clerk to the justices - - - - -	-	-
Overseer [<i>or</i> surveyor], for obtaining the summons - -	-	-
Constable, for serving ditto - - - - -	-	1 0
Ditto, travelling expenses at threepence per mile - -	-	-
Total -	-	-

If the amount of these charges, together with the rate claimed, be paid to the overseer [*or* surveyor] before the day on which the summons is returnable, all further proceedings will be stopped.

(C. 1.)

Warrant of Distress against One Ratepayer.

To the overseers of the poor [*or* to the surveyors of the highways] of the parish of , in the [*county*] of , and to the constable of , and to all other peace officers in the said [*county*].

WHEREAS on last past a complaint was made before *E. F.*, one of her Majesty's justices of the peace in and for the [*county*] of , by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of , in the said [*county*], that *A. B.*, being a person duly rated and assessed to the relief of the poor [*or* to the maintenance of the highways] of the said parish, in and by a rate made on , in the sum of , had not paid the same or any part thereof, but had refused so to do ; and now at this day, to wit, on , at , the parties aforesaid appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said county [*or* the said churchwardens and overseers, *or* surveyors, by *C. D.*, one of the said overseers, *or* surveyors, appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said county ; but the said *A. B.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such two or more justices of the peace as should now be here, to answer the said complaint, and to be further dealt with according to law] ; and now having heard the matter of the said complaint, and it being now duly proved to us

upon oath [in the presence and hearing of the said *A. B.*], that an assessment for the [relief of the poor, *or* the maintenance of the highways] of the said parish of , and for other purposes chargeable thereon according to law, dated the , was duly made, allowed, and published, and that the said *A. B.* is therein and thereby assessed at the sum of aforesaid,* and that the said sum hath been duly demanded of the said *A. B.*, but that he hath not paid, and hath refused and still refuses to pay the same; and the said *A. B.* now not showing to us any sufficient cause for not paying the same: These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of [*five*] days after the making of such distress the said sum, and the sum of for the costs incurred by the said [churchwardens and overseers, *or* surveyors] in obtaining this warrant, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sales you retain the said sums of and , rendering the overplus, on demand, to the said *A. B.*, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Given under our hands and seals, this day of , in the year of our Lord .at , in the [county] aforesaid.

E. F.

G. H.

* "And that a certain other assessment for the relief," *etc.*, to the asterisk, if there be arrears.

(C. 2.)

[Sect. 3.]

Warrant of Distress against several Ratepayers.

To the overseers of the poor [*or* the surveyors of the highways] of the parish of , in the [county] of , and to the constables of , and to all other peace officers in the said [county].

WHEREAS on last past a complaint was made before *E. F.*, one of her Majesty's justices of the peace in and for the [county] of , by the [churchwardens and overseers of the poor, *or* the surveyors of the highways] of the parish of , in the said [county], that the several persons whose names are mentioned and set forth in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, *or* maintenance of the highways] of the said parish, in and by the rates in the schedule in that complaint and in this warrant underwritten, in certain sums set down opposite to their respective names in the said schedule, had not respectively paid the said sums or any part thereof, but had respectively refused so to do; and now at this day, to wit, on , at , the said [churchwardens and overseers, *or* surveyors] by *C. D.*, one of the said overseers, *or* surveyors, and *A. B.*, *I. K.*, and *L. M.*, some of the said parties in the said schedule mentioned, appear before us, the undersigned, two of her Majesty's justices of the peace in and for the said [county], but the said *N. P.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said *N. P.* has been duly served with the summons in this behalf, which required him to be and appear here at this day, before such two or more justices of the peace as should now be here, to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint against the said several parties, and it being now duly proved to us upon oath, in the presence of the parties so appearing as aforesaid, that an assessment for [*the relief of the poor*] of the said parish of , and for other purposes chargeable therein according to law, dated the , was duly made, allowed, and

published, and that the said several persons whose names are mentioned and set out in the schedule hereunder written are therein and thereby assessed at the sums set down opposite to their respective names in the said schedule, and that the said several sums have been duly demanded of them respectively, but they have not, nor hath any of them, paid the said sums or any of them, or any part thereof respectively, but they have refused and still do refuse to pay the same respectively, and have not, nor hath any of them, showed to us sufficient cause for not paying the same : These are therefore to command you, in her Majesty's name, forthwith to make distress of the goods and chattels of the several persons whose names are mentioned and set out in the schedule hereunder written ; and if within the space of *five* days after the making of such distresses respectively the said several sums set opposite to their respective names at which they were so rated and assessed as aforesaid, and the said several sums for costs incurred by the said [churchwardens and overseers, *or* surveyors] also set opposite to their respective names, together with the reasonable charges of taking and keeping the said distress in each case, shall not be paid, that then you do sell the goods and chattels of the party so making default so by you distrained, and out of the money arising by such sales respectively you retain the sums so set opposite to the name of each party whose goods you shall have so sold, rendering to him the overplus, the reasonable charges of taking, keeping, and selling the said distress being first deducted ; and if in any of the cases mentioned in the schedule hereunder written no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

SCHEDULE.

Names of Ratepayers.	Residence.	Under Rate dated , 1849.	Arrears due under Rate dated , 1848.	Costs.			Total.
		£ s. d.	£ s. d.	£	s.	d.	£ s. d.
A. B. - -	(here state it)	1 7 0	1 7 0	0	6	0	3 0 0
I. K. - -	- - -	0 13 0	—	0	0	0	0 15 0
L. M. - -	- - -	—	0 18 6	0	3	0	1 1 6
N. P. - -	- - -	0 14 3	0 14 3	0	5	0	1 13 6

Given under our hands and seals, this day of , in the year of
our Lord , at , in the [county] aforesaid.

E. F.
G. H.

(D.)

Warrant of Commitment in Default of Distress.

To the overseers of the poor [*or* the surveyors of the highways] of the parish of , in the [county] of , and to the constable of , and to all other peace officers in the said [county], and to the keeper of the [house of correction] at , in the said [county].

WHEREAS on last past a complaint was made before *E. F.*, esquire, one of her Majesty's justices of the peace in and for the said [county] of , by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of , in the said [county], that *A. B.*, being a person duly rated to the [relief of the poor, *or* maintenance of the highways] of the said parish, in and by a rate made on , in the sum of , had not paid the same or any part thereof, but had refused so to do ; and afterwards on , at , the parties aforesaid appeared before *E. F.* and *G. H.*, esquires, two of her Majesty's justices of the peace in and for the

said county [*or* the said churchwardens and overseers, *or* surveyors by *C. D.*, one of the said overseers, *or* surveyors, appeared before *E. F.* and *G. H.*, esquires, two of her Majesty's justices of the peace in and for the said county, but the said *A. B.*, although duly called, did not appear by himself, his counsel or attorney, and it was then satisfactorily proved to the said justices that the said *A. B.* had been duly served with the summons in that behalf, which required him to be and appear there at that day, before such two or more justices of the peace as should then be there, to answer the said complaint, and to be further dealt with according to law]; and then having heard the matter of the said complaint, and it being then duly proved to the said justices upon oath [in the presence and hearing of the said *A. B.*] that an assessment for the [relief of the poor, *or* the maintenance of the highways] of the said parish of _____, dated the _____, was duly made, allowed, and published, and that the said *A. B.* was therein and thereby assessed at the sum of _____ aforesaid, and that the said sum had been duly demanded of the said *A. B.*, but that he had not paid, and had refused and still refused to pay the same, and the said *A. B.* then not showing to the said *E. F.* and *G. H.* any sufficient cause for not paying the same, the said justices thereupon then issued a warrant to _____, commanding them to levy the said sum of _____, and the sum of _____ for the costs incurred in obtaining that warrant, by distress and sale of the goods and chattels of the said *A. B.*: And whereas it now appears to me, the undersigned, one of her Majesty's justices of the peace in and for the said [county], as well by the return of the said _____ to the said warrant of distress as otherwise, that the said _____ hath made diligent search for the goods and chattels of the said *A. B.*, but that no sufficient distress whereon to levy the said sums above mentioned could be found: These are therefore to command you, the said [churchwardens and overseers, *or* surveyors] and constable and peace officers, or some or one of you, to take the said *A. B.*, and him safely to convey to the [house of correction] at _____ aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said [house of correction], to receive the said *A. B.* into your custody in the said [house of correction], there to imprison him for the space of _____, unless the said sums of _____ and _____, together with the sum of _____ for the costs attending the said distress, and the further sum of _____, being the costs and charges of this commitment, and of taking and conveying the said *A. B.* to prison, making in the whole the sum of _____, shall be sooner paid unto you, the said keeper; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day of _____, in the year of our Lord _____, at _____, in the [county] aforesaid.

J. S. (L.S.)

THE QUARTER SESSIONS ACT, 1849 (*u*).

(12 & 13 VICT. c. 45.)

An Act to amend the Procedure in Courts of Quarter Sessions in England and Wales, and for the better Advancement of Justice in Cases within the Jurisdiction of those Courts.

[28th July 1849.]

[1.] In every case of appeal (except as herein-after mentioned) to any court of quarter sessions fourteen clear days notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts, or any rule or practice of any court or courts, to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney on his, her, or their behalf, and the grounds of appeal

Notice of
appeal to
quarter
sessions.

(*u*) Commonly called "Baines' Act."

shall be specified in every such notice : Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice.

This Act not to affect appeals in certain matters.

2. None of the provisions herein-before contained relating to notices of appeal shall be construed to affect or alter the law as to notice of appeal against a summary conviction, or against an order of removal, or against an order under any statute relating to pauper lunatics, or against an order in bastardy, or against any proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office, but the law with regard to notices of all such appeals shall be deemed and taken to be the same as if the provisions herein-before contained had not been enacted.

Certain objections not to prevail.

3. [*Revital.*] Upon the hearing of any appeal to any court of quarter sessions no objection on account of any defect in the form of setting forth any ground of appeal shall be allowed, and no objection to the reception of legal evidence offered in support of any ground of appeal shall prevail, unless the court shall be of opinion that such ground of appeal is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial : Provided always, that in all cases where the court shall be of opinion that any objection to any ground of appeal, or to the reception of evidence in support thereof, ought to prevail, it shall be lawful for such court, if it shall so think fit, to cause any such ground of appeal to be forthwith amended by some officer of the court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to such court shall appear just and reasonable.

Amendment.

Costs in frivolous or vexatious appeals.

4. If in any notice of appeal the appellant or appellants shall have included any ground or grounds of appeal which shall in the opinion of the court determining the appeal be frivolous or vexatious, such appellant or appellants shall be liable, if the court shall so think fit, to pay the whole or any part of the costs incurred by the respondent or respondents in disputing any such ground or grounds of appeal, such costs to be recoverable in the manner herein-after directed as to the other costs incurred by reason of such appeal.

General powers as to costs of appeals.

5. Upon any appeal to any court of quarter sessions the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs

11 & 12 Vict. c. 43.

upon an appeal against an order or conviction by the Summary Jurisdiction Act, 1848.

Costs where appeal is not prosecuted.

6. And for the more effectual prevention of frivolous appeals, any court of quarter sessions, upon proof of notice of any appeal to the same court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if it so think fit, at the same sessions for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said court shall be thought reasonable and just, to be paid by the party or parties giving such notice, such costs to be recoverable in the manner last aforesaid.

7. [*Recital.*] If upon the trial of any appeal to any court of quarter sessions against any order or judgment made or given by any justice or justices of the peace or if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorised the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereupon as if no such omission or mistake had existed : Provided always, that no objection on account of any omission or mistake in any such order or judgment brought up upon a return to a writ of certiorari shall be allowed, unless such omission or mistake shall have been specified in the rule for issuing such certiorari. Powers of amendment on appeal or certiorari.

8. [*Recital.*] Where any recognizance or recognizances which shall have been entered into within the time by law required before any justice or justices for the purpose of complying with any such condition of appeal shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances to be entered into before such court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable ; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times, as required by any statute or statutes for that purpose. Defective recognizances.

9. The decisions of the court of quarter sessions upon the hearing of any appeal, as to the sufficiency of the statement of any ground or grounds of appeal, and as to the amending or refusing to amend any order or judgment of a justice or justices appealed against, or the statement of any ground or grounds of appeal, and as to the substitution of any new recognizance or recognizances as aforesaid, shall be final, and shall not be liable to be reviewed in any court, by means of a writ of certiorari or mandamus, or otherwise. Decisions of sessions as to statement of grounds, amendment, or recognizances, to be final.

10. Every court of quarter sessions on the trial of any offence within its jurisdiction, whenever any variance or variances shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof in the indictment shall have the same power in all respects to cause the indictment to be amended which is given to courts of oyer and terminer and general gaol delivery with regard to offences tried before such last-mentioned courts by virtue of an Act of the twelfth year of her Majesty's reign, intituled " An Act for the removal of defects in the administration of criminal justice " ; and after such amendment the trial shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance or variances had appeared. Amendment of indictments by quarter sessions.

11. At any time after notice given of appeal to any court of quarter sessions against any judgment, order, rate, or other matter, (except an order Special case, after notice given of

appeal to
quarter
sessions.

in bastardy, or a proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office,) for which the remedy is by such appeal, it shall be lawful for the parties, by consent, and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court, and for such costs as such court shall adjudge, may be entered on motion by either party at the sessions next or next but one after such decision shall have been given : and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of quarter sessions upon an appeal duly entered and continued.

Arbitration
after notice
given of
appeal to
quarter
sessions.

12. [*Revital of 9 Will. 3, c. 15, as to arbitrations.*] At any time after notice given of appeal to any court of quarter sessions against any order, rate, or other matter, (except a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office,) for which the remedy is by such appeal, it shall be lawful for the parties, by themselves or their attornies, and by order of a judge of her Majesty's Court of Queen's Bench, to submit the matter or matters of such appeal to the award or umpirage of any person or persons . . . and every award or umpirage duly made under this Act shall be as binding and effectual to all intents as if the same had been a regular judgment of the said court of quarter sessions, and shall and may, on the application of either party, be enrolled among the records of the said court of sessions.

Arbitration
by order of
court of
quarter
sessions.

13. It shall be lawful for any court of quarter sessions before which any appeal (except against a summary conviction, or an order in bastardy, or any proceeding under or by virtue of any of the statutes relating to her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office,) shall be brought, to order, with consent of the parties or their attornies, that the matter or matters of such appeal be referred to arbitration, to such person or persons and in such manner and on such terms as the said court shall think reasonable and proper ; . . . and the award of the arbitrator or arbitrators, or umpirage of the umpire, may, on motion by either party at the sessions next or next but one after such award or umpirage shall have been finally made and published, or after the decision of the Court of Queen's Bench on any motion for setting aside the same, be entered as the judgment of the court of quarter sessions in the appeal, and shall be as binding and effectual to all intents as if given by the said court.

Where refer-
ence becomes
abortive,
Court of
Queen's
Bench may
order quarter
sessions to
hear the
appeal.

14. If upon any reference to arbitration under this Act it shall be made to appear to the Court of Queen's Bench that either from the death of the arbitrator or arbitrators or umpire, or from any other cause, it has become impossible that an award or umpirage can be made, it shall be lawful for the said court to order the court of quarter sessions to enter continuances and hear the appeal.

15. [*Repealed, 54 & 55 Vict. c. 67 (S. L. R.).*]

Recogni-
zances not to
be forfeited
by statement
of special
case or sub-
mission to
arbitration.

16. No recognizance entered into pursuant to any statute or statutes for the prosecution and trial of any appeal shall be deemed to be forfeited by such agreement as aforesaid for the statement of a special case without previously going to the court of quarter sessions, or by any submission to arbitration under the provisions of this Act.

17. And whereas by the Levy of Fines Act, 1822, provision is made for 3 Geo. 4, authorizing the levying and recovery of fines, issues, amerciaments, and c. 46. forfeited recognizances, set, imposed, lost, or forfeited by or before any justice or justices of the peace in England : And whereas it is expedient that the subsequent proceedings in such cases should be uniform : Be it enacted, that the proceedings subsequent to such authority given for so levying and recovering as aforesaid shall and may be the same in all respects, in the case of such fines, issues, and amerciaments, as are by the said Act provided, permitted, and required in the case of such forfeited recognizances. Recovery of fines, etc., imposed by justices.

18. In all cases where any order shall be made by any court of quarter sessions, it shall be lawful for the Court of Queen's Bench, or for any judge of that court at chambers, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy, and upon proof of refusal or neglect to obey such order, to order and direct such order of the court of quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect, and may be enforced in the same manner, as a rule made by the said Court of Queen's Bench; and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order. Enforcement of orders after removal by certiorari.

19. Nothing in this Act contained shall extend to Scotland or Ireland. Extent of Act.
 20 and 21. [*Repealed*, 38 & 39 Vict. c. 66 (S. L. R.).]

THE POOR LAW (PAYMENT OF DEBTS) ACT, 1859. (22 & 23 VICT. c. 49.)

An Act to provide for the Payment of Debts incurred by Boards of Guardians in Unions and Parishes and Boards of Management in School Districts.

[13th August 1859.]

1. With respect to any debt, claim, or demand which may, be lawfully incurred by or become due from the guardians of any union or parish, or the board of management of any school or asylum district, such debt, claim, or demand shall be paid within the half year in which the same shall have been incurred or become due, or within three months after the expiration of such half year, but not afterwards ; the commencement of such half year to be reckoned from the time when the last half year's account shall or ought to have been closed according to the order of the Poor Law Commissioners or Poor Law Board : Provided, that the Poor Law Board, by their order, may, if they see fit, extend the time within which such payment shall be made for a period not exceeding twelve months after the date of such debt, claim, or demand. When debts in future are to be paid.
Power to the Poor Law Board to extend the time.

2. [*Repealed*, 38 & 39 Vict. c. 66 (S. L. R.).]

3. Where any sum shall have been or shall be borrowed by any guardians or managers, and the debt shall have been or shall be charged by the said guardians upon the poor rates, under the authority of any statute, and the same shall be made payable on a day certain, the time of limitation prescribed by this Act for payment of debts shall commence on that day ; where it shall not have been made payable on any day certain, then on the expiration of twelve months from the day when the money was advanced ; Time for payment of debts charged on the rates.

and in the case of any debt repayable by instalments, each instalment shall be payable within one year next after the day when the same shall fall due : unless the said board shall in any of the cases provided for in this section allow an extension of the time for the payment not exceeding six months ; and the interest payable in every case hereby provided for shall be payable within the like times only as the principal.

Provision for judgments recovered in actions against guardians or managers.

4. If any person claiming any debt or demand shall have commenced or shall hereafter commence proceedings in any court of law or equity, or before any justice or other competent authority, within the time herein-before limited, or within the time to which the Poor Law Board may grant extension, and shall with due diligence prosecute such proceedings to judgment or other final settlement of the question, such judgment shall be satisfied by the guardians or managers against whom or against whose officer the same may be brought, notwithstanding that such judgment may be recovered or such final settlement arrived at after the expiration of the period herein-before provided ; and all proceedings taken by mandamus or otherwise for the enforcing of such judgment without delay shall be deemed to be within the operation of this section.

Payment of attorney's bills, when to be made.

5. Where the guardians or managers shall be engaged in a suit, action, or proceedings in any court, they shall not be required by any rule of law or provision herein contained to pay the bill of costs of any solicitor or attorney retained by them for the purpose thereof, until the final determination of such suit or proceeding, or until he shall cease to be so retained by or for them therein ; but the bill of costs of such solicitor or attorney shall be duly taxed and paid within the term of one year next after such final determination of the said suit, proceeding, or retainer, and not afterwards, unless the Poor Law Board shall authorize an extension of time not exceeding six months ; provided, that if the said solicitor or attorney take proceedings for the recovery of his bill within such time or the extension thereof, he shall in such case have the same right to be paid as in section four ; provided also, that nothing herein contained shall prevent the guardians or managers from paying money at any time on account of the suit or proceeding.

Calls or orders to provide for debts payable under this Act to be legal, etc.

6. No call or order for contribution made by any guardians, nor any poor rate made to meet such call or order, shall be deemed to be illegal on the ground that the same is made to provide for any debt, claim, or demand, the payment whereof is authorized by this Act, or on the ground that the said call or order for contribution includes a balance due from any parish or parishes at the time when the half-yearly accounts are made up and balanced as aforesaid : Provided always, that when the fund out of which any such debt, claim or demand should have been discharged shall have been already paid by any parish to the board of guardians of any union, and shall not have been applied for that purpose, any funds which may be required to be again contributed to discharge such debt, claim or demand, shall be levied on each parish in the union in proportion to the rateable value of each such parish.

Interpretation.

7. The words used in this Act shall be construed in like manner as the same words are directed to be construed by the Poor Law Amendment Act, 1834, or any subsequent Act amending or explaining the same.

4 & 5 Will. 4, c. 76.

THE POOR RATES RECOVERY ACT, 1862.

(25 & 26 VICT. c. 82.)

An Act for the more economical Recovery of Poor Rates and other Local Rates and Taxes.

[7th August 1862.]

1. Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before justices or to be issued by justices; and every such document as aforesaid shall, as respects each rate or tax comprised in it, be construed as a separate document; and its invalidity as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it:

No costs shall be allowed in respect of several informations, complaints, summonses, orders, warrants, or other such documents as aforesaid, in cases where, in the opinion of the justices or court having jurisdiction over the said costs, one information, complaint, summons, order, warrant, or other document as aforesaid might have sufficed, regard being had to the provisions of this Act.

THE UNION ASSESSMENT COMMITTEE ACT, 1862.

(25 & 26 VICT. c. 103.)

An Act to amend the Law relating to Parochial Assessments in England.

[7th August, 1862.]

WHEREAS it is expedient that more effectual provision should be made for securing uniform and correct valuations of parishes in the unions of England:

1. The words used in this Act shall be construed in like manner as the words contained in the Poor Law Amendment Act, 1834, and the word "committee" shall signify the assessment committee provided for by this Act; and this Act shall be termed "The Union Assessment Committee Act, 1862."

Interpretation.
4 & 5 Will. 4,
c. 76.
Short title.

2. The board of guardians of every union formed under the Poor Law Amendment Act, 1834, shall, in every year, at their first meeting after the annual election of guardians, appoint from among themselves any number not less than six nor more than twelve to be a committee, . . . to be called the assessment committee of the union, for the investigation and supervision of the valuations to be made as herein-after mentioned within such union, and for the performance of such said acts and duties as herein-after mentioned: . . . (r).

Appointment of assessment committee by board of guardians.

This section repealed as to Metropolis (r).

[3. Where any union shall have the same bounds as a municipal borough, the clerk to the guardians of such union shall, upon the appointment of the assessment committee, if directed by the said guardians to do so, transmit in writing the names of the persons so appointed to the town

council of such borough; and such council may thereupon, if they think fit, appoint from themselves a certain number, not exceeding the number

Where union has the same bounds as a borough, names of assessment committee to be transmitted to

(r) Words omitted (relating to *ex-officio* guardians) repealed by the Local Government Act, 1834 (56 & 57 Vict. c. 73), s. 89.

(r) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

town council, who may appoint additional members.

appointed by the board of guardians, who shall, until they respectively cease to be members of the town council or decline to act, forthwith form part of the assessment committee for such union ; and the said council may from time to time supply any vacancies in the number of persons appointed by them.]

Provision in case of neglect to appoint.

4. If the guardians shall neglect or be prevented from making such appointment at the meeting above specified, the Poor Law Board shall by their order appoint some other day on which the guardians shall make such appointment.

Supply of vacancies.

5. If any . . . guardian being a member of the committee cease to be guardian, or resign his seat at such committee, or die, or become incapable of acting as such member, the board of guardians shall with all convenient speed appoint a . . . guardian . . . to supply the vacancy (*y*).

Continuing members may act during vacancies.

6. During any vacancy in any assessment committee the other or continuing members of such committee may act, and shall have the same powers and jurisdiction as if no such vacancy had happened.

Extent of committee's authority.

7. The authority of the committee appointed for any union under this Act shall extend over every parish comprised in such union.

Meetings, when and where to be held, etc.

8. The committee shall hold their first meeting at the board room of the union on a day to be fixed by the board of guardians ; and the subsequent meetings of the committee shall be holden at such times and at such place and upon such notice and requisition as they shall from time to time appoint ; and any guardian of the union may be present at any meeting of the committee, but shall not be entitled to take part in the proceedings thereof.

Majority and quorum at meetings.

9. All acts, orders, matters, and things by this Act authorized or directed to be made or done by the committee may be made or done by the major part of the members of such committee who shall be present at a meeting, the whole number present together at such meeting not being less than three, and not less in any case than one-third of the whole number of which such committee consists ; and when upon any question there shall be an equality of votes, the presiding chairman shall have a second or casting vote.

Committee may employ and pay clerk.

10. The committee shall employ the clerk or assistant clerk of the board of guardians as their clerk, with such remuneration for his services as the Poor Law Board shall sanction.

Proceedings to be entered in books and signed ;

11. The committee shall cause a minute of their proceedings, and of the names of the members who attend each meeting, to be duly made from time to time in books to be provided for that purpose, which shall be kept by their clerk under their superintendence ; and every such entry shall be signed by the presiding chairman of the assessment committee present at the meeting at which the proceeding took place (*z*) ; and such entry, purporting to be so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such meeting having been duly convened or held, or of the persons attending such

such entries evidence.

(*y*) Words omitted (relating to *ex officio* guardians) repealed by the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 89.

(*z*) Amended, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 74, *infra*, p. 783.

meeting having been or being members of the committee, or of the signatures of the members, all of which facts shall be presumed until the contrary be proved; and all such books shall at all reasonable times be open to the inspection of every person rated to the relief of the poor in any parish or place in the union, without any fee being demanded for such inspection; and all such persons shall be entitled at all reasonable times to take copies or extracts from the said books, without paying any fee for the same; and if, on request made for that purpose, the clerk of the committee refuse to permit any such person to inspect any such books, or to take copies or extracts therefrom, as aforesaid, such clerk shall for every such offence be liable to a penalty not exceeding five pounds, upon a summary conviction for the same before two justices of the peace.

Books to be open to inspection.

12. The board of guardians shall in the month of April in every year report the proceedings of their assessment committee to the Poor Law Board.

Proceedings of committees to be reported.

13. The committee by their order may from time to time require the overseers, assistant overseers, constables, assessors, collectors, and any other persons having the custody of any books of assessment of any taxes or rates, parliamentary or parochial, or of the valuations of any parish, or having the collection or management of any such taxes or rates, to make returns in writing to the committee, at such times and places as they may appoint, of all such particulars as they may direct in relation to such taxes, rates, or valuations, or any property included therein, so far as relates to the union for which they act, and may require the persons having the custody of any such books as aforesaid to make and transmit to the committee copies of or extracts from such books, or to permit such copies or extracts to be made by such persons as the committee may in that behalf direct; and may from time to time require any persons having the custody of any such books, or the collection or management of any such taxes or rates as aforesaid, to attend before them at a time and place to be mentioned in the order in this behalf, and to produce all parochial and public books of assessment, rates, rate books, valuations, apportionments, tithe and other maps, plans, surveys, and other public documents in their custody or power, and may examine all persons who shall attend before them: Provided always, that nothing herein contained shall authorize the production of valuations or assessments which by any provision of law at present are not suffered to be made public.

Committee may require returns from overseers, etc.;

and may require production of books, etc., and examine persons attending before them.

This section repealed as to Metropolis (a).

[14. Subject to any order as herein-after referred to which may be made by the committee, the overseers of each parish in the union shall, within three calendar months after the appointment of such committee, make a list of all the rateable hereditaments in such parish, with the annual value thereof respectively in so much of the form shown in the schedule annexed to the Act sixth and seventh William the Fourth, chapter ninety-six, as is set out in the schedule to this Act; and unless such overseers think that the valuation then last acted upon in assessing the rate for the relief of the poor correctly shows the full annual rateable value of all such hereditaments, they shall revise such valuation, and such overseers shall sign every list so made by them as aforesaid, and such list shall be styled "the valuation list."]

Overseers to prepare valuation lists.

(a) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

Definition of gross estimated rental.

**This section repealed as to Metro-
polis (b).**

[15. The gross estimated rental for the purpose of the schedule to this Act shall be the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and tithe commutation rentcharge, if any: Provided, that nothing herein contained shall repeal or interfere with the provisions contained in the first section of the said Act (six and seven William the Fourth, chapter ninety-six), defining the net annual value of the hereditaments to be rated.]

Committee may enlarge the time for making first valuation lists, and may give directions concerning valuations and valuation lists, and may appoint persons to make the same.

16. The committee by their order may from time to time enlarge the time within which the first valuation lists under this Act shall be made by the overseers of all or any of the parishes in the union, and for ensuring a uniform and correct valuation of every parish in the union may direct that any existing valuation of the rateable hereditaments in any parish be revised, in whole or in part, or a new valuation of such hereditaments be made by the overseers; or the committee may, with the consent of the board of guardians of the union, after notice shall have been sent to every guardian thereof, in any case appoint some person for either of the purposes aforesaid, and may direct such person to make and sign the valuation list instead of the overseers; and every valuation list so made and signed shall be delivered by such person to the overseers of the parish to which the same relates.

Valuation lists to be deposited for inspection, and afterwards transmitted to the committee.

**Part within brackets repealed as to Metro-
polis (b).**

17. The valuation list for each parish, made and signed by the overseers, or delivered to them, as herein-before provided, shall be deposited by the overseers in the place in such parish in which rate books are deposited or kept, [and a copy of such valuation list shall be forthwith delivered to the board of guardians,] and the overseers shall give public notice of the deposit of such list on the Sunday next following the deposit of such list: and such notice shall be given in the same manner, and all persons assessed or liable to be assessed to the relief of the poor of such parish shall have the like right of inspecting, and of demanding and taking copies of and extracts from such list, as in the case of a poor rate allowed by the justices; and the overseers shall, at the expiration of fourteen days (c) from the time of the notice given of the deposit of such list, transmit the same to the committee; and any overseer or other ratepayer within the union shall have the right of inspecting and taking copies of and extracts from any of the lists so transmitted.

Objections to valuation list.

18. Any overseer or overseers of any parish in any union who shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, or any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of twenty-eight days (d) after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof, and, where the ground of any objection shall be unfairness or incorrectness in the valuation of any hereditament in respect of which

(b) Repealed, as to the "metropolis" only, by 32 & 33 Viet. c. 67, s. 77, *infra*, p. 783.

(c) As to "metropolis," see 32 & 33 Viet. c. 67, s. 42 (2), *infra*, p. 773.

(d) Twenty-five days in metropolis; see 32 & 33 Viet. c. 67, s. 42 (3), *infra*, p. 773.

any person, other than the person objecting, is liable to be rated, or the omission of such hereditament, also give notice in writing of such objection, and of the ground thereof, to such other person.

19. The committee shall hold such meetings as they may think necessary for hearing objections to the valuation lists, and shall, twenty-eight days at least before holding every meeting for hearing objections to valuation lists, other than meetings by adjournment, cause notice of such meeting to be given to the overseers of the several parishes to which such lists relate ; and such overseers shall, on the Sunday next following the receipt of such notice, publish the same in the manner in which notice of a rate allowed by justices is by law required to be given ; and the committee may at any such meeting hear and determine such objections, or may from time to time adjourn any such meeting, and adjourn or postpone the hearing or further hearing and determination of any such objections, and may, where they think fit, direct notice of any such objections to be given by the overseers or by the persons objecting to third parties before the further hearing thereof ; but the committee shall not be required to hold a meeting for hearing objections to the valuation list of any parish, unless such notice in writing as herein-before mentioned of some objection or objections thereto have been given to the committee ; and where a meeting is holden for hearing objections to the valuation list of any parish, the committee shall not hear any objection to such valuation list unless such notice as aforesaid of such objection have been given to the committee and to the overseers, and, where the ground of such objection is unfairness or incorrectness in the valuation of any hereditament of any other person than the person objecting, or the omission of such hereditament, also to such other person by the person objecting ; except where the overseers, by themselves or any other person on their behalf, and in the case aforesaid such other person as aforesaid, by himself or any other person on his behalf, consent to the hearing of such objection ; and in such case the committee may, if they see fit, hear the same ; and where the committee see fit to hear the same, they shall act in relation thereto in like manner as if notice of such objection had been duly given.

20. The committee may, whether any objection be or be not made to any such valuation list, and either before or after any meeting for hearing objections, make such alterations in the valuation of any hereditaments included in any valuation list, and insert therein any rateable hereditament omitted therefrom, and make such corrections in names, descriptions, and particulars in any valuation list, and upon such information as to them may seem sufficient, and may, with the consent of the guardians as aforesaid, appoint or employ a person to survey and value the rateable hereditaments comprised in any such valuation list or any of them, or omitted therefrom, or may take such other means as they may think necessary for ascertaining the correctness thereof ; and when the committee have heard and determined all such objections as aforesaid, and have made such alterations, insertions, and corrections in any valuation list as to them may seem proper, they shall approve the same under the hands of three members of the committee present at the meeting at which the same is approved, with the date of such approval.

21. Where the committee make any alteration in the valuation of any hereditaments included in, or insert therein any rateable hereditament omitted from, any such valuation list, they shall cause such valuation list, with such

Committee to hold meetings to hear objections.

Committee may correct valuation lists, and when corrected shall approve the same.

Valuation list when altered to be

deposited for inspection, etc.

alteration or insertion, to be deposited for inspection in manner herein-before provided concerning the valuation list made by or delivered to the overseers, and shall cause the like notice to be given of such deposit as is required in the case of a valuation list so made or delivered as aforesaid, and shall appoint a day, not less than seven days nor more than fourteen days from the re-deposit of such valuation list, for the hearing of any objections to the valuation list as so altered; and when the committee have heard and determined any such objections, or have made such further alterations, insertions, and corrections in such valuation list, they shall approve the same in manner herein-before provided.

If on appeal a rate is amended, the valuation list to be altered.

**This section repealed as to Metro-
polis (e).**

[22. In case any ratepayer shall under the existing law appeal to the special sessions or quarter sessions against any rate made for the relief of the poor in any parish, and the result of such appeal shall be to amend the rate appealed against, the assessment committee shall alter the valuation list of the said parish in conformity with the decision so made.]

Custody, etc., of valuation list after approval.

**This section repealed as to Metro-
polis (e).**

[23. Every valuation list, when approved by the committee, shall be delivered to the overseers of the parish to which the same relates, and shall be preserved at the like place and in the like custody, and be subject to the like resort thereto, and be delivered over from time to time in like manner, as the books are wherein rates and assessments for the relief of the poor for the same parish are entered, and shall be produced by the overseers before the justices, upon application, for the allowance of rates, and at the special or general or quarter sessions when any appeal is to be heard, and also at such times and places as the committee may from time to time direct.]

Lists to be deemed valuation lists in force.

**This section repealed as to Metro-
polis (e).**

[24. Every valuation list approved by the committee, and delivered to the overseers of the parish to which the same relates, shall, with and subject to the alterations and additions for the time being made therein or thereto by any supplemental valuation lists so approved and delivered, be the valuation list in force in such parish, except in the case of any parish, as is herein-after referred to, in which the poor rate, or assessment for the poor rate, is made under the authority of a local Act, until a new valuation list in substitution for the same be approved and delivered in like manner.]

Overseers to prepare supplemental valuation lists in case of additions to or alterations in the rateable property of the parish.

**This section repealed as to Metro-
polis (e).**

[25. When and so often as any property not included in the valuation list in force in any parish becomes rateable, or where, by reason of any alteration in the occupation of any property included in such list, such property becomes liable to be rated in parts not mentioned in such list as rateable hereditaments and separately valued therein, and when and so often as it shall appear to the overseers that any rateable property included in such list has been increased or reduced in value since the valuation thereof, whether by building, destruction of building, or other alteration in the condition thereof or otherwise, the overseers of the parish in each of the cases aforesaid shall, as soon as conveniently may be, make a supplemental valuation list showing the annual rateable value according to the judgment of the overseers of the property so become rateable, or of the parts so become liable to be rated separately, or of the property so increased or reduced in value, as the case may be.]

(e) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77. *infra*.

This section repealed as to Metropolis (f). [26. The committee by their order may from time to time, Committee may from time to time direct new valuation, and new or supplemental valuation lists.

where they see fit, upon the application of any person aggrieved by the valuation list in force in any parish, or where they themselves think the same expedient, direct a new valuation of all or any of the rateable hereditaments in such parish, and a new valuation list in substitution for such valuation list as aforesaid, or a supplemental list in substitution for any part thereof or in addition thereto, to be made by the overseers ; or the committee may, with such consent as aforesaid, appoint a person for such purposes ; and the committee may, in directing such new valuation and the making of such new or supplemental valuation list, give and make all such or the like directions and provisions in relation thereto as they are authorized under this Act to give and make in relation to the valuations and valuation lists first directed and authorized to be made under the Act.]

This section repealed as to Metropolis (f). [27. All the provisions of this Act in relation to signature, deposit, objections, approval and otherwise concerning the valuation list first directed and authorised to be made under this Act of the rateable hereditaments in any parish, shall be applicable to every new or supplemental valuation list to be made under this Act.] Provisions as to first valuation lists to apply to new and supplemental lists.

Part within brackets repealed as to Metropolis (f). 28. [In every parish where a valuation list under this Act has been approved and delivered to the overseers, no rate for the relief of the poor, or other rate which by law is required to be based upon the poor rate, shall be of any force, unless the hereditaments included in such rate, except as hereinafter provided, be rated according to the annual rateable value thereof appearing in the valuation list in force in such parish ; and instead of the declaration required by the second section of the said statute of the sixth and seventh years of William the Fourth, chapter ninety-six, the overseers shall, before the rate shall be allowed by the justices, sign a declaration according to the form set forth in the schedule hereunto annexed :] Provided always, that where by reason of any alteration in the occupation of any property included in such list such property has become liable to be rated in parts not mentioned in such list as rateable hereditaments and separately rated therein, such parts may, where a supplemental valuation list showing the annual rateable value of such parts has not been approved and delivered, as herein-before required, and whether such list has or has not been made, be rated according to such amounts as shall be fair apportioned parts of the annual rateable value appearing in such valuation list in force as aforesaid of the hereditaments out of which such parts have been constituted. After a valuation list is approved no rate to be of force unless made according to such list.

6 & 7 Will. 4, c. 96, s. 4.

This section repealed as to Metropolis (f). [29. The provisions of section twenty-eight shall not apply to any poor rate made by any vestry, trustees, guardians, commissioners, overseers, or other persons authorized by any local Act to make the rate for the relief of the poor in any parish, or the assessment on which such rate is made.] Saving for places under local Acts.

30. When the assessment committee for any union shall have approved valuation lists for all the parishes comprised within such union, the guardians of such union, in computing the amount of contribution to the common fund for the several parishes, shall thenceforward take the annual rateable value In computing amount of contributions to common fund the

annual rateable value to be taken from approved valuation lists.

of the property in such parishes respectively from the valuation lists for the time being lastly approved of for such parishes respectively, any statute to the contrary notwithstanding: Provided, that in case any parish comprised in any union shall receive any sum of money as a contribution in aid of the poor rate of such parish, for or in respect of government property within such parish and used for public purposes, the annual value of such property according to the estimate (if any) of such value on which the amount of the sum of money so received is computed, or, if there be no such estimate, then the annual value of such property estimated in the mode provided by the Act sixth and seventh William the Fourth, chapter ninety-six, for making an estimate of the annual rateable value of property liable to be rated to rates for the relief of the poor, shall be included by the overseer or overseers in the valuation list of such parish, and shall be added to the annual rateable value of the property in such parish in computing the amount of contribution to the common fund for the several parishes in such union.

6 & 7 Will. 4, c. 96.

Copy of valuation list to be deposited in board room.

**This section repealed as to Metro-
polis (g).**

[31. The committee shall cause a copy of the valuation list for the time in force for every parish in the union to be made and deposited at the board room or other convenient place to be appointed by the board of guardians in the custody of the clerk, which copy shall be open at seasonable times to the inspection of any of the guardians of the union, and of any overseer of any parish within the union, without charge, and of any ratepayer within the union on payment of one shilling, such fee to be carried to the account of the common fund.]

Appeal against valuation list.

**This section repealed as to Metro-
polis (g).**

[32. If the overseer or overseers of any parish in any union shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, whether it be on the ground that the rateable hereditaments comprised in the valuation list of such parish are valued at sums beyond the annual rateable value thereof, or on the ground that the rateable hereditaments comprised in the valuation list of some other parish in such union are valued at sums less than the annual rateable value thereof, it shall be lawful for such overseer or overseers, with the consent of a vestry summoned for the purpose of considering the expediency of giving such consent, to appeal to the quarter sessions for the county or borough in which the greatest number of parishes belonging to the union is situate, or, in case the number of parishes in any two or more such jurisdictions is equal, to the quarter sessions for the county or borough having jurisdiction over the parish in which the workhouse of the union is situate, at the sessions to be holden after the expiration of a month after the allowance of and deposit of such valuation list as aforesaid, against such valuation list of the parish which shall appear to be over-valued or under-valued; and if in any case any such overseer or overseers appeal against the valuation list of any other parish on the ground that the rateable hereditaments in such list are valued at less than the annual rateable value thereof, such overseer or overseers shall give fourteen clear days notice in writing previous to the first day of the said quarter sessions at which the appeal is to be made of the intention to appeal, and the grounds thereof, to the overseers of the poor of such parish, and to the guardians of the union comprising such parish; and if any overseer or overseers of any parish appeal against the valuation list of such parish on the ground that the rateable hereditaments in such list are valued

(g) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

beyond the annual rateable value thereof, such overseer or overseers shall give fourteen days notice in writing previous to the quarter sessions at which the appeal is to be made of the intention to appeal, and the grounds thereof, to the guardians of the union in which such parish is situate; the said court shall be empowered to hear and determine such appeal, and either confirm such valuation list, or correct such irregularities or inaccuracies as shall be proved to exist therein as to them may appear fair and just; but no such valuation list shall upon such appeal be quashed or destroyed in regard to any other parish unless the court deem it necessary to proceed to the making of an entire new valuation list as herein-after provided.]

This section repealed as to Metro- [33. It shall be lawful for the court of quarter sessions **Proceedings**
polis (h). upon any such appeal, instead of hearing the said appeal, to on appeals.
adjourn the same, and to order, upon the application of the
appellant or respondent in such appeal, a survey or valuation
of any of the parishes in respect of which such appeal shall

be made, and to fix the next or some subsequent sessions for receiving such survey or valuation, and for hearing and determining such appeal; and such court shall also thereupon appoint a proper person to make such survey or valuation; and the person so appointed shall have power, with or without assistants, to enter upon and survey, measure, and value all the hereditaments liable to be assessed to the rates for the relief of the poor within the parish or parishes mentioned in such order; and such survey and valuation shall be reported to the quarter sessions on adjournment fixed as aforesaid for receiving the same, and the court then and there assembled shall hear and determine the said appeal in the manner herein-before set forth.]

This section repealed as to Metro- [34. The charges and expenses of any such survey and **Costs of new**
polis (h). valuation so ordered shall be deemed costs in such appeal, valuation and
and abide the event thereof; and the court before which appeal.
any such appeal is heard and determined may order the
costs in and about the appeal to be paid by either the

appellant or respondent party, as they in their discretion may think fit; but where any appeal is made on the ground that the rateable hereditaments of any parish comprised in the valuation list of such parish are valued beyond the annual rateable value thereof, if the court on such appeal determine in favour of the appellants, such court shall ascertain the costs and charges incurred by such appellants in and about such appeal, and shall order the board of guardians of the union in which such parish is situate to pay the same to the appellants out of the money raised for the common fund for the several parishes in such union.]

This section repealed as to Metro- [35. Nothing herein contained shall be construed to **Act not to**
polis (h). prevent the owners of tenements from compounding for the prevent com-
rates to be assessed on the same, in such manner as they position for
were by any statute or statutes enabled to do before the rates.
passing of this Act.]

This section repealed as to Metro- [36. Nothing herein contained shall extend or be taken to **Saving of**
polis (h) render liable to be rated any property, or any person in exemptions
respect of any occupation not now by law rateable of any and special
property, or to deprive any property, or the occupier of any rules of
property, of the benefit of any exemption, in whole or in rating, etc.
part, to which such property or occupier is now by law entitled, from any

(h) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

poor rate or other rate which by law is required to be based upon the poor rate, or to render liable to be rated, according to the annual rateable value thereof, any property which under any local Act or otherwise is entitled to be rated upon a fixed amount, or according to any special or exceptional principle of valuation, whether such property shall or shall not be included in any valuation list in force under this Act, or shall in anywise affect the provisions of the Cambridge Award Act, 1856, or the Act of the seventeenth and eighteenth Victoria relating to the relief of the poor in the city of Oxford.]

19 & 20 Vict.
c. xvii.

17 & 18 Vict.
c. cexix.

Committee
may allow
compensation
for returns,
etc., and
expenses.

Remunera-
tion to clerk
and expenses
of committee.

Expenses
of valuation,
etc., when to
be paid out
of poor rates
of parishes,
and when
out of com-
mon fund.

Penalty for
non-attend-
ance, etc., in
obedience to
order of the
committee.

Injuring rate
books, etc., a
misdemeanor.

Authentica-
tion and
service of
orders and
notices of the
committee.

Service of
notices, etc.,
on the com-
mittee.

37. The committee may allow such compensation for any returns, copies, or extracts, or any valuation, or valuation list, or other act, matter, or thing to be made or done in pursuance of their order, and such expenses connected therewith, as to the committee in each case seems just.

38. The remuneration allowed by the committee to their clerk, and all expenses incurred by them for the common use and benefit of the several parishes within the union for which they are appointed, shall be paid by the guardians of the said union, and be charged upon the common fund thereof.

**This section repealed as to Metro-
polis (i).** [39. The expenses of making any valuation and valuation list of any parish, or any of such expenses, whether such valuation and valuation list respectively be made by the overseers, or by any person appointed by the committee, shall be charged upon the poor rates of such parish if the valuation made by direction of the committee shall exceed by one sixth the amount of the valuation delivered to them by the overseers, and upon the common fund of the said union if the valuation so made as last mentioned shall not exceed by one sixth the valuation so delivered as aforesaid.]

40. Every person who wilfully refuses to attend in obedience to any lawful order of any such committee, or to give evidence, or refuses to produce any rate book, assessment, or valuation which may be lawfully required to be produced before such committee, shall for every such offence be liable to a penalty not exceeding twenty pounds upon a summary conviction for the same before two justices of the peace: and every person who wilfully injures, defaces, conceals, or destroys such rate book, or who upon any examination before any such committee wilfully gives false evidence, shall be deemed guilty of a misdemeanor.

**This section repealed as to Metro-
polis (i).** [41. Every order and notice made or given by the committee under this Act may be in writing or print, or partly in writing and partly in print, and shall be sufficiently authenticated if signed by their clerk, and may be served by the same or a copy thereof being delivered personally or sent by the post to the party on or to whom such order or notice purports to be made or given, or by being delivered at his usual place of abode.]

**This section repealed as to Metro-
polis (i).** [42. Any notice or statement required to be served upon the committee may be served by being left at the office of the clerk to the board of guardians, or sent through the post office, addressed to the committee at such clerk's office, or by being delivered personally to their clerk, or at his usual place of abode.]

(i) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

**This section repealed as to Metro-
polis (j).** [43. In every parish, until a valuation list has been Form of approved and delivered to the overseers under this Act, poor rate. every rate made for the relief of the poor in such parish shall be made in the form and contain the particulars required by the said Act of the sixth and seventh years of 6 & 7 Will. 4 c. 96. King William the Fourth ; and after such valuation list has been so approved and delivered, every such rate, except in any parish where the poor rate or the assessment for the same is made under the provisions of a local Act as aforesaid, shall show the annual rateable value of each hereditament comprised therein according to the valuation list in force in such parish.]

44. All the powers, authorities, provisions, clauses, and regulations now in force relating to the assessment, collection, and levying of poor rates (save so far as the same are hereby repealed or altered) shall be good, valid, and effectual for the purposes of assessing, levying, collecting, and enforcing the payment of such rate and for carrying this Act into execution.

Provisions concerning the assessment, etc., of poor rates to be applicable to rates made according to this Act.
Power for unions under local Acts or 22 Geo. 3, c. 83, to be included in this Act.

**This section repealed as to Metro-
polis (j).** [45. And whereas there are divers unions or incorpo- rations for the relief of the poor formed under local Acts and under the Act of the twenty-second year of King George the Third, chapter eighty-three, which may desire to adopt the provisions of this Act : Be it enacted, that any such union or incorporation on resolution to that effect of a majority at two successive meetings of the body having under the constitution of such union or incorporation the management of the relief of the poor within the same, may, by writing under the hand of the presiding chairman of the second of such meetings, apply to the Poor Law Board to be included in this Act ; and such union or incorporation, upon the consent of the Poor Law Board being given to such application under its seal, shall be so included ; and such consent so signified shall be evidence that such application was in all respects duly made according to the provisions above mentioned ; and such regulations shall thereafter be made from time to time by the said board, with the consent of such body, as may be necessary to render the provisions of this Act conformable with the provisions of the Act under which the said union or incorporation shall have been formed.]

46. This Act shall extend only to England.

Extent of Act.

SCHEDULE (k). [Sect. 14.]

VALUATION LIST for [the parish or place for which the list is made] in the County of .

Name of Occupier.	Name of Owner.	Description of Property.	Name or Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.

Signed this day of .

A.B. } Overseers of the Poor of the
C.D. } Parish aforesaid.

(j) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77. *infra*.
(k) See now the Agricultural Rates Order, 1896, Art. XVI., and Schedule W. thereto, *infra*.
R. 3 c

DECLARATION TO BE ADDED TO THE RATE. [Sect. 28.]

WE, the undersigned, do hereby declare that one of us, or some person on our behalf, has examined and compared the several particulars in the respective columns of the above rate with the valuation list made under the authority of the Union Assessment Committee Act, 1862, in force in this parish (or township); and the several hereditaments are, to the best of our belief, rated according to the value appearing in such valuation list.

_____ } Churchwardens.
 _____ }

_____ } Overseers.
 _____ }

THE UNION ASSESSMENT COMMITTEE AMENDMENT ACT, 1864.

(27 & 28 VICT. C. 39.)

An Act to Amend the Union Assessment Committee Act, 1862. [14th July 1864.]

Notice of appeal against poor rate to be given to the assessment committee of union.
 25 & 26 Vict. c. 103.

No appeal against rate made in conformity with valuation list, unless objection has been made to list.

Assessment committee to hear such objections.

Committee may, with consent of guardians, appear as respondents on appeal.

Provision as to costs of committee on appeals.

**This section repealed as to Metro-
 polis (l).** [1. Before any appeal shall be heard by any special or quarter sessions against a poor rate made for any parish contained in any union to which the Union Assessment Committee Act, 1862, applies, the appellant shall give twenty-one days notice in writing previous to the special or quarter sessions to which such appeal is to be made of the intention to appeal, and the grounds thereof, to the assessment committee of such union: Provided, that after the first day of August next no person shall be empowered to appeal to any sessions against a poor rate made in conformity with the valuation list approved of by such committee, unless he shall have given to such committee notice of objection against the said list, and shall have failed to obtain such relief in the matter as he deems just; and which objection, after notice given at any time in the manner prescribed by the said Act with respect to objections, the committee shall hear, with full power to call for and amend such list, although the same has been approved of, and no subsequent list has been transmitted to them, and if they amend the same shall give notice of such amendment to the overseers, who shall thereupon alter their then current rate accordingly.]

2. The assessment committee of such union may, with the consent of the guardians of such union, after notice (m) shall have been sent to every guardian, appear as respondents to such appeal, but in the name of the guardians of such union, in like manner, and with the same incidents, and subject to the same liabilities, and entitled to the same remedies and rights, as in the case of persons other than the overseers to whom notice of appeal may be given.

3. The costs which the committee may incur in consequence of becoming respondents to such appeal, or of having received notice thereof, shall, if not recovered from the appellants, as well as any costs the committee may be

(l) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

(m) See *Smith v. Leigh Union*, [1904] 1 K. B. 484; Ryde & Konstan's Rat. App. (1894—1904) 339; *supra*, p. 591.

ordered to pay to the appellants, be paid by the guardians and charged to the common fund of the union, unless the court before whom such appeal is heard shall direct that such costs, or any part thereof, shall be charged to the parish, the rate of which is appealed against.

4. Where a valuer is appointed by the assessment committee, he shall make his valuation in writing, showing the particulars of the several hereditaments comprised therein, and the amounts at which he has valued the same respectively, and shall sign such valuation, which shall be open to inspection in like manner, and with the same incidents with respect to the taking of copies or extracts, as the minute books of the committee.

Valuation of valuer to be made in writing, and signed, and to be open to inspection.

5. Within fourteen days after the transmission to the assessment committee of any valuation or supplemental valuation list, the committee shall give notice to every railway, telegraph, canal, gas, and water company named in such list as the occupier of any property included therein, and not having any office or place of business in the parish to which such list relates, of the sum or sums set down as the rateable value of the property purporting to be occupied by such company or companies; and such notice may be served by being transmitted through the post to the principal office of the company, or one of their principal offices, when there shall be more than one.

Notice of valuation to be given to companies named as occupiers, but not having places of business in the parish.

6. No justice of the peace shall be disqualified for acting in the determination of any appeal against a poor rate at any quarter or special sessions by reason of such justice being rated, or being liable to be rated, in some other parish in the union than that for which the rate appealed against is made.

Justices in certain cases not disqualified for hearing appeals.

7. When the overseers of any parish incur any expense in making out any valuation list or supplemental list, or in revising or valuing any of the rateable hereditaments of such parish, under the provisions of the Union Assessment Committee Act, 1862, with the consent of the vestry given by express resolution, after due notice, they may charge such expense, so far as the same may be authorised by the vestry, upon the poor rate; and if no vestry meeting be held, or no decision arrived at on the subject, then to the extent which the assessment committee shall allow: Provided, that as regards the valuation of the property no expense shall be so charged upon the poor rate unless the consent of such committee to the procuring of such valuation by the overseers shall have been given previously to the same being made.

Expenses of overseers, as to valuation list, etc., incurred with consent of vestry or allowed by assessment committee, may be charged on poor rates.

8. If the assessment committee order a valuation, with the consent of the board of guardians, to be made of all the rateable hereditaments of any parish, the guardians of the union may, if they think fit, apply to the Poor Law Board for an order to enable them to borrow the requisite amount to pay the cost of such valuation; and if the said Board shall issue their order, the said guardians may borrow the same, and charge the poor rates of the several parishes in the union with the repayment of the same by not more than five equal annual instalments; and where the parish for which the valuation is made shall, by reason of any provision in the said Union Assessment Committee Act or this Act, be liable to pay the cost of such valuation, the said guardians shall charge the annual instalments, and the interest payable therewith, to such parish, and may recover the same as and with the usual contributions.

Power to guardians, with the order of the Poor Law Board, to borrow money for valuation expenses, by charge on poor rates of union, or on parish.

Totals of rental and rateable value of property included in lists to be sent to clerks of the peace.

**This section repealed as to Metro-
polis (n).**

[9. The clerk of every assessment committee shall send annually in the month of December copies of the totals (o) of the gross estimated rental and rateable value of the property included in the valuation lists of the several parishes within the union, and where such totals have been altered by any supplemental valuation list or lists, then of such totals as altered, to the clerk or respective clerks of the peace of the county or counties within which such parishes respectively may be situate.]

Power of assessment committee, under order of Poor Law Board, to order map or plan to be made.

10. If there be no map or plan of any parish available for the use or sufficient for the purposes of the assessment committee, the committee may, with the consent of the guardians, after notice as aforesaid, and under the authority of an order of the Poor Law Board, appoint a competent person to make a map or plan of such parish, and the cost thereof shall be charged either to the common fund, or to the parish, as may be directed by the Poor Law Board.

Penalty on overseers omitting to make declaration required by 25 & 26 Vict. c. 103, or making false declaration.

**This section repealed as to Metro-
polis (n).**

[11. Any overseer who wilfully omits to make the declaration required to be made by the Union Assessment Committee Act, 1862, or makes the same falsely, knowing the same to be untrue, shall be liable for every such offence to a penalty not exceeding five pounds, upon a summary conviction for the same before two justices of the peace.]

25 & 26 Vict. c. 103, incorporated herewith.

12. The provisions of the Union Assessment Committee Act, 1862, shall, so far as the same are not contrary hereto, be incorporated herewith, and the terms used herein shall be construed in like manner as in that Act.

Short title.

13. This Act may be cited as "The Union Assessment Committee Amendment Act, 1864."

THE POOR LAW AMENDMENT ACT, 1868.

(31 & 32 VICT. c. 122.)

An Act to make further Amendments in the Laws for the Relief of the Poor in England and Wales. [31st July 1868.]

* * * * *

Provision for incorporation of certain extra-parochial places and accretions from the sea in adjoining parishes for civil purposes.

27. Every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for the year one thousand eight hundred and fifty-one or not, for which an overseer has not been then appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish, shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value; and every accretion from the sea, whether natural or artificial, and the part of the seashore to the low-water mark, and the bank of every river to the middle of the stream, which on the twenty-fifth day of December next shall not be included within the boundaries of or annexed

(n) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

(o) See also the Agricultural Rates Act, 1896, s. 5 (b), *infra*, p. 803.

to and incorporated with any parish, shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins, in proportion to the extent of the common boundary.

29. Where an appeal is brought against the poor rate of a parish in a union, and may appear to involve a principle in which some neighbouring parishes has a common interest, it shall be lawful for the guardians of the unions comprising such parishes to enter into an agreement mutually to bear the costs which may be properly incurred in and about the trial of such appeals on the part of the several respondents, as well as the costs of the appellants, if any, which may be awarded against the respondents, in such proportions as shall be fixed and determined with reference to the amount of interest of the several unions in the question, or otherwise as shall appear just : and the said agreement shall continue binding upon the several boards of guardians and their respective successors in succession until the several appeals shall have been finally determined.

This section repealed as to Metropolis (p). [30. When the assessment committee in any union shall have finally approved of any valuation list, whether original, substitutional, or supplemental, they shall cause the total (q) of the entries in the columns for the gross estimated value and the rateable value to be ascertained and entered at the foot of the same, and shall retain such list for the use of the guardians, to be dealt with in the manner provided by the thirty-first section of the Union Assessment Committee Act, 1862, and shall deliver a fair copy of the same to the overseers signed by the three members of the committee who approved of the same ; and such copy shall be countersigned by the clerk of the committee, and shall be preserved by the overseers, and dealt with by them in all respects as the lists made out by them would have been dealt with according to the law now in force, and it shall not be necessary for the said committee to cause any other copy to be made.]

This section repealed as to Metropolis (p). [31. Where any valuation list heretofore approved, or the copy hereafter to be made, shall be lost, injured, or destroyed, the overseers of the parish to which it relates may apply to the clerk of the guardians for a copy of the same ; and the clerk, upon payment of a reasonable compensation, not exceeding three shillings for one hundred separate rateable hereditaments, shall give such copy, and certify the same to be a true copy of the list deposited with the said guardians ; and such certified copy shall be thenceforth available as the original.]

This section repealed as to Metropolis (p). [32. The guardians may, upon the application of the assessment committee, after notice sent in the manner required by the Union Assessment Committee Act, 1862, appoint some competent person to assist the committee in the valuation of the rateable hereditaments of the union for such period as they shall see fit, at a salary or other settled remuneration to be paid out of the common fund (r).]

(p) Repealed, as to the "metropolis" only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

(q) See also the Agricultural Rates Act, 1896, s. 5 (b), *infra*, p. 803.

(r) Re-enacted, as to metropolis, 32 & 33 Vict. c. 67, s. 61, *infra*, p. 780.

Provision for rating of new houses or buildings

This section repealed as to Metropolis (s).

[38. When any person shall occupy any new house or other building in any parish where the poor rate is not made under the provisions of a local Act, which house or building was incomplete, or not fit for occupation, or was not entered as such in the valuation list in force in the parish at the time when the current rate for the time being was made, the overseers may enter such house or building with the name of the occupier thereof and the date of the entry in the rate book, and require the occupier to pay such amount as according to their judgment shall be the proper sum, having due regard to the rateable value of such house or building, and the time which shall have elapsed from the making of the current rate to the date of such entry, and the person so charged shall be considered as actually rated from such date, and shall be liable to pay the sum assessed in like manner, and subject to the like penalty of distress, and with the like power of appeal, as if he had been assessed for the same when the rate was made : Provided, that when the said overseers shall so enter the said house or building in the rate book they shall forward to the assessment committee of the union comprising such parish, if any such there be, a supplemental list with reference to such house or building, and the same shall be dealt with in all respects, and with the like incidents and consequences, as a supplemental list made by the overseers under section twenty-five of the Union Assessment Committee Act, 1862 (t).]

25 & 26 Vict. c. 103.

Demand of poor rate, or summons for non-payment, may be made on the premises, where occupier is not resident in parish.

39. When a poor rate shall be made and assessed upon any land or premises, and the occupier thereof is not living on such land or premises nor in the parish for which the rate shall be made, or the owner, if assessed for such rate in the place of the occupier, is not living in such parish, a demand of the rate in writing delivered to the person having the custody of the land or premises, or if no such person can be found, then affixed upon some conspicuous part of the land or premises, shall be deemed a sufficient demand to justify proceedings for the non-payment of such rate ; and where the residence or place of abode of the person assessed is not known to the overseers, and cannot be ascertained upon inquiry at the said land or premises, the summons for the non-payment of the rate may be served in like manner.

Service of demand of rate from a corporation or a company, and of summons for non-payment.

40. When a poor rate is assessed upon any corporation aggregate, joint stock or other company, or any conservators or other public trustees, a demand for payment, either made by letter sent through the post addressed to the clerk or secretary or other principal officer of the corporation, company, conservators, or trustees at the office of such corporation, company, conservators, or trustees, or made personally upon such clerk, secretary, or officer at such office, shall be deemed a sufficient demand, and a summons for the non-payment of such rate may be served in like manner.

* * * * *

Short title.

46. This Act may be cited and described for all purposes as " The Poor Law Amendment Act, 1868."

(s) Repealed, as to the " metropolis " only, by 32 & 33 Vict. c. 67, s. 77, *infra*.

(t) As to metropolis, see 32 & 33 Vict. c. 67, s. 47, *infra*.

THE SUNDAY AND RAGGED SCHOOLS (EXEMPTION FROM RATING) ACT, 1869.

(32 & 33 VICT. c. 40.)

An Act to exempt from rating Sunday and Ragged Schools. [26th July 1869.]

1. Every authority having power to impose or levy any rate upon the Sunday and occupier of any building or part of a building used exclusively as a Sunday School or Ragged School may exempt such building or part of a building from any rate for any purpose whatever which such authority has power to impose or levy: Provided, that nothing in this Act contained shall prejudice or affect the right of exemption from rating of Sunday or Infant Schools, or for the charitable education of the poor in any churches, district churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, by virtue of the Poor Rate Exemption Act, 1833. ragged schools may be exempted from rates for relief of poor, etc.
3 & 4 Will. 4, c. 30.

2. A "Sunday School" shall mean any school used for giving religious education gratuitously to children and young persons on Sunday, and on week days for the holding of classes and meetings in furtherance of the same object, and without pecuniary profit being derived therefrom. Interpretation of terms.

A "Ragged School" shall mean any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed.

3. This Act shall not extend to Ireland.

Extent of Act.

4. This Act may be cited as "The Sunday and Ragged Schools (Exemption from Rating) Act, 1869."

THE POOR RATE ASSESSMENT AND COLLECTION ACT, 1869.

(32 & 33 VICT. c. 41.)

An Act for amending the Law with respect to the rating of Occupiers for short terms, and the making and collecting of the Poor's Rate.

[26th July 1869.]

1. The occupier of any rateable hereditament let to him for a term not exceeding three months shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate so paid. Lessees for short terms may deduct poor rate from rent.

2. No such occupier shall be compelled to pay to the overseers at one time or within four weeks a greater amount of the rate than would be due for one quarter of the year. Amount of rate payable by occupier.

3. In case the rateable value of any hereditament does not exceed twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or Owners may agree to pay the rate, and be allowed a commission.

ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof.

Vestries may order the owner to be rated instead of the occupier.

4. The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order : and thereupon and so long as such order shall be in force the following enactments shall have effect :

1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate :
2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated :
3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect :

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included.

Owners omitting to pay rates before the fifth day of June to forfeit commission.

5. When an owner who has become liable to pay the poor rate omits or neglects to pay, before the fifth day of June, in any year, any rate or any instalment thereof which has become due previously to the preceding fifth day of January, and has been duly demanded by a demand-note delivered to him or left at his usual or last known place of abode, he shall not be entitled to deduct or receive any commission, abatement, or allowance to which he would, except for such omission or neglect, be entitled under this Act, but shall be liable to pay, and shall pay, such rate or instalment in full.

Repeal of 13 & 14 Vict. c. 99, etc., so far as applies to the poor rate.

6. The statute thirteenth and fourteenth Victoria, chapter ninety-nine, with respect to the rating of small tenements, and so much of any local statute as relates to the rating of owners instead of occupiers, are hereby repealed, so far as the same apply to any poor rate made after this Act comes into operation.

Constructive payment of the rate.

7. Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as herein provided, and every pay-

ment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate.

8. Where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner, and the receipt for such rate shall be a valid discharge of the rent to the extent of the rate so paid.

Where owners omit to pay rates, the occupiers paying the same may deduct amount from the rent.

9. Every owner who agrees with the overseers to pay the poor rate, or who is rated or liable to be rated for any hereditament instead of the occupier, shall deliver to the overseers, from time to time, when required by them, in writing, a list containing the names of the actual occupiers of the hereditaments comprised in such agreement, or for which he is so rated or liable to be rated; and if any such owner wilfully omits to deliver such list when required to do so, or wilfully omits therefrom or misstates therein the name of any occupier, he shall for every such omission or misstatement be liable, on summary conviction, to a penalty not exceeding two pounds.

Owners to give lists of occupiers, and liable to penalty for wilful omission.

10. Section twenty-eight of the Representation of the People Act, 1867, with respect to notice to be given of rates in arrear, shall apply to occupiers of premises capable of conferring the parliamentary franchise, although the owners of such premises have become liable for the rates assessed thereon under the provisions of this Act.

Notice to occupiers of rates in arrear.
30 & 31 Vict. c. 102.

11. Where the owner has become liable to the payment of the poor rates the rates due from him, together with the costs and charges of levying and recovering the same, may be levied on the goods of the owner, and be recovered from him in the same way as poor rates may be recovered from the occupier.

Liability of owner under agreement.

12. Notwithstanding the owner of any such rateable hereditament as aforesaid has become liable for payment of the poor rates assessed thereon, the goods and chattels of the occupier shall be liable to be distrained and sold for payment of such rates as may accrue during his occupation of the premises, at any time whilst such rates remain unpaid by the owner, subject to the following provisions:

Recovery of rates unpaid by the owner.

1. That no such distress shall be levied unless the rate has been demanded in writing by the overseers from the occupier, and the occupier has failed to pay the same within fourteen days after the service of such demand:
2. That no greater sum shall be raised by such distress than shall at the time of making the same be actually due from the occupier for rent of the premises on which the distress is made:
3. That any such occupier shall be entitled to deduct the amount of rates for which such distraint is made, and the expense of distraint, from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate and expenses paid.

Owner may appeal against valuation list and rate.

13. Every owner of any hereditament for the rates of which he has become liable shall have the same right of appeal (subject to the same conditions and consequences) against the valuation lists and the poor rates as if he were the occupier thereof.

The overseer to state the period for which poor rate is made. Proviso.

14. The overseers of every parish when they make a poor rate shall set forth in the title of the rate the period for which the same is estimated, and if the same is payable by instalments the amount of each instalment and the date at which each instalment is payable; provided that if the necessities of the parish shall require it another rate may be made before such period shall have elapsed (*u*).

Overseers may make poor rate payable by instalments.

15. The overseers who make the poor rate for a period exceeding three months may declare that the same shall be paid by instalments at such times as they shall specify, and thereupon each instalment only shall be enforceable as and when it falls due, and the payment of any such instalment shall, as respects any qualification or franchise depending upon the payment of the poor rate, be deemed a payment of such rate in respect of the period to which such instalment applies.

Provision for successive occupiers, and for occupiers coming into unoccupied hereditaments.

16. If the occupier assessed in the rate when made shall cease to occupy before the rate shall have been wholly discharged, or if the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupation, as the case may be, and the date when such occupation commences, so far as the same shall be known to them, and such occupier shall thenceforth be deemed to have been actually rated from the date so entered by the overseer, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner, and with the like remedy of appeal, as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within the period for which the rate was made (*x*); and the twelfth section of the statute 17 Geo. 2, c. 38, shall be repealed.

When the poor rate shall be deemed to be made.

17. A poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance.

Evidence of making and publication of rates.

18. The production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *prima facie* evidence of the due making and publication of such rate.

Overseers to insert names of all occupiers in the rate.

19. The overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid (*y*); and if any overseer negligently or wilfully and

(*u*) As to the validity of concurrent rates, apart from this proviso, see *R. v. Fordham* (1839), 11 A. & E. 73.

(*x*) Amended by 45 & 46 Vict. c. 20, s. 3, *infra*, p. 794.

(*y*) Declared to be of general application, by 41 & 42 Vict. c. 26, s. 14. The section is extended to persons entitled to the service franchise, by 48 Vict. c. 3, s. 9 (*s*).

without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary conviction to a penalty not exceeding two pounds ; provided, that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted.

20. The word "overseer" shall include every authority that makes an assessment for the poor rate ; the words "poor rate" shall mean the assessment for the relief of the poor, and for the other purposes chargeable thereon according to law, and in the metropolis shall extend to every rate made by the overseers, and chargeable upon the same property as the poor rate ; the word "owner" shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent ; the word "parish" shall signify every place for which a separate overseer can be appointed ; the word "vestry" shall include not only the vestry of a parish existing under the authority of some general or special Act of Parliament, or by special custom or otherwise, but also the meeting of the inhabitants of any township, vill, or place having a separate overseer, and for which a separate poor rate is made, held after notice given in like manner as is required by law in regard to the meetings of vestries ; and the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 18 & 19 Vict. c. 120. 1855.

21. This Act shall not extend to Scotland or to Ireland. Extent.

22. This Act may be cited as "The Poor Rate Assessment and Collection Short title. Act, 1869," . . .

THE VALUATION (METROPOLIS) ACT, 1869.

(32 & 33 VICT. c. 67.)

An Act to provide for Uniformity in the Assessment of Rateable Property in the Metropolis. [9th August 1869.]

PRELIMINARY.

1. The Union Assessment Committee Act, 1862, is in this Act referred to Construction. as "the principal Act" ; and the principal Act, and the Union Assessment 25 & 26 Vict. Committee Act, 1864, (amending the same,) shall for the purposes of this c. 103. Act, and so far as is consistent with the tenor thereof, be incorporated with 27 & 28 Vict. this Act ; and the expression "this Act" in the principal Act, and any c. 39. expression referring to the principal Act which occurs in the said Act amending the same, or in any other Act or document, shall, as regards places to which this Act extends, be construed to mean the principal Act as incorporated with this Act.

2. This Act (including the Acts incorporated herewith) may be cited as Short title. "The Valuation (Metropolis) Act, 1869."

Extent.

3. This Act shall extend only to unions and parishes not in union, which are for the time being either wholly or for the greater part in value thereof respectively situate within the jurisdiction of the Metropolitan Board of Works appointed under the Metropolis Management Act, 1855.

18 & 19 Vict.
c. 120.

Interpre-
tation.

4. In this Act, unless the context otherwise requires,—

The term “metropolis” means the unions and parishes to which this Act extends :

The term “parish” means any place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :

The term “union” means any union of parishes, and any parish for which there is a separate assessment committee under this Act and the Acts incorporated herewith :

The term “ratepayer” means every person who is liable to any rate or tax in respect of property entered in any valuation list (z) :

The term “year” means the twelve months commencing with the sixth of April and ending with the succeeding fifth of April : and words referring to a year refer to the same period :

The term “surveyor of taxes” means any surveyor of taxes, inspector of taxes, or other officer appointed or to be appointed by the Commissioners either of Inland Revenue or of Her Majesty’s Treasury for the purposes of any tax in respect of which a valuation list is by this Act made conclusive :

The term “overseers” includes any person or body of persons performing the duties of overseers so far as regards the assessment, making, and collection of rates for the relief of the poor :

The term “vestry clerk” means the vestry clerk, if any, elected under the Vestries Act, 1850, or under a local Act, or, if there is no such clerk, the vestry clerk appointed under the Metropolis Management Act, 1855 :

The term “hereditament” means any lands, tenements, hereditaments, and property which are liable to any rate or tax in respect of which the valuation list is by this Act made conclusive :

The term “gross value” means the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant’s rates and taxes, and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent :

The term “rateable value” means the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid :

The Acts specified in the first schedule to this Act are in this Act referred to by the short title placed opposite to them in that schedule.

ASSESSMENT COMMITTEE.

Election of
assessment
committee in
single parish
where there
is a vestry.

5. Where, in any parish which is not included in any union formed under the Poor Law Amendment Act, 1834, and the Acts amending the same, there is for the time being a vestry elected according to the provisions of

(z) See also 47 & 48 Vict. c. 5, s. 2, *infra*, p. 794.

the Metropolis Management Act, 1855, but no assessment committee under the principal Act, the following provisions shall have effect :

- (1) Where in any such parish there is a board of guardians having power under any local Act to assess or make the rates for the relief of the poor, that board of guardians shall appoint an assessment committee :
- (2) Where any two of such parishes are united under a local Act for the purpose of assessing or making the rates for the relief of the poor, the guardians for such united parishes elected in pursuance of the Poor Law Amendment Act, 1834, and the Acts amending the same, shall appoint an assessment committee : 4 & 5 Will. 4
c. 76.
- (3) In cases other than those before mentioned the vestry of such parish shall appoint an assessment committee :
- (4) In every year, the body who appoint an assessment committee under this section shall on a day fixed by such body between the fifteenth and twenty-ninth of April in that year, or some other date fixed by the Poor Law Board, hold a meeting, and appoint from among themselves an assessment committee (consisting of not less than six nor more than twelve in number) in the same manner, as near as may be, as if the parish or united parishes were an union and the appointing body a board of guardians within the meaning of the principal Act.

All the provisions of this Act and the Acts incorporated herewith shall—

- (a) in cases where the assessment committee is appointed by guardians under this section be construed as if such guardians, and the moneys applicable by such guardians for the relief of the poor, were the guardians mentioned in the principal Act and the common fund (a) ; and—
- (b) in cases where the assessment committee is appointed by the vestry be construed, so far as is consistent with the tenor thereof, as if the terms vestry, members of the vestry, vestry clerk, assistant vestry clerk, and moneys applicable to the payment of the expenses of a vestry under the Metropolis Management Act, 1855, were respectively substituted for the terms board of guardians, guardians, clerk of the board of guardians, assistant clerk of the board of guardians, and common fund, but nothing in such Acts relating to ex-officio guardians shall have any application in the case of a vestry (a). 18 & 19 Vict.
c. 120.

MAKING OF VALUATION LISTS.

- 6. The overseers of every parish to which this Act extends, within the time in this Act mentioned, shall make and sign a valuation list of their parish in duplicate, in accordance with this Act. Making of valuation lists.
 - 7. After the valuation list is signed by the overseers the same proceedings shall be had as are directed by the seventeenth, eighteenth, nineteenth, twentieth, and twenty-first sections of the principal Act, subject to the alterations made by this Act. Valuation lists to be dealt with under 25 & 26 Vict. c. 103, ss. 17 to 21.
 - 8. The overseers shall send one duplicate of the valuation list to the surveyor of taxes of the district at the same time that the other duplicate is Duplicate sent to surveyor of taxes.
- (a) See the London Government Act, 1899 (62 & 63 Vict. c. 14), ss. 13, 31, *infra*; and pp. 628, 683, 692, *supra*.

deposited by them. The surveyor of taxes shall insert in the duplicate so sent to him the amount in his opinion of the gross value of the hereditaments comprised in such list where such amount differs from the amount inserted by the overseers, and shall transmit the duplicate to the assessment committee within twenty-eight days after he has received the same.

Notice to occupier of alteration of value, etc.

9. In each of the following cases, namely,

- (1) Where the overseers of the parish insert in the valuation list some hereditament not previously assessed, or raise the gross or rateable value of some hereditament above the value stated in the valuation list for the time being in force or (where there is no valuation list) in the then last assessment to the poor rate, or
- (2) Where the assessment committee (otherwise than in determining an objection) alter a valuation list by inserting therein some hereditament, or by raising the gross or rateable value of some hereditament comprised therein,

the overseers shall immediately after the deposit or re-deposit of the list (as the case may be) serve on the occupier (*b*) of such hereditament a notice of the gross and rateable value thereof inserted in the valuation list.

Notice to state time and mode of objection.

10. The notice of the deposit and re-deposit of the valuation list published by the overseers shall state the times at which and the mode in which objections are to be made.

Grounds on which persons may object before assessment committee.

11. Objections may be made before the assessment committee by any person authorised by this Act and the Acts incorporated herewith to object who feels himself aggrieved by reason of the unfairness or incorrectness of the valuation of any hereditament, or by reason of the insertion or incorrectness of any matter in the valuation list, or by reason of the omission of any matter therefrom, or by reason of such a valuation list as is required by this Act not having been transmitted by the overseers to the assessment committee. The notice of objection shall specify the correction which the objector desires to be made.

Surveyor of taxes, etc., may inspect, copy, and object to valuation list.

12. A surveyor of taxes, and any ratepayer in the parish, shall have the same right of inspecting, copying, taking extracts from, and objecting to any valuation list which relates to his district or parish as is given to any person by this Act and the Acts incorporated herewith.

If overseers do not transmit list, committee to appoint a person to do so.

13. If the overseers of any parish fail to transmit such a valuation list as is required by this Act, the assessment committee shall appoint some person to make a valuation list, and may allow such person such remuneration in addition to his expenses as they think fit; and all expenses incurred by the assessment committee in pursuance of this section shall be paid by the guardians, and charged by them to such parish.

The person so appointed shall have for the purposes of this section the same powers and duties as overseers, and the valuation list so made shall be dealt with in like manner as if it had been duly made and transmitted by the overseers.

Valuation list to be revised, certified, and sent to overseers, etc.

14. The assessment committee, within the time in this Act mentioned, shall revise the valuation list in accordance with this Act and the Acts incorporated herewith. When they have finally approved such valuation

(*b*) See also 47 & 48 Vict. c. 5, s. 2, *infra*, p. 794.

list, they shall cause the totals (*c*) of the gross and rateable value in such list to be ascertained and inserted in the list, and three members of the committee present at the meeting at which the list is finally approved shall sign at the foot thereof such declaration of approval and certificate of compliance with this Act as is contained in Part One of the Second Schedule to this Act. One duplicate, so certified, shall be sent to the clerk of the managers of the metropolitan asylum district (*d*), and the other duplicate to the overseers of the parish to which it relates.

15. The overseers of the parish, on receiving the duplicate of the valuation list so sent to them by the assessment committee, shall immediately deposit it in the place in which the rate books of the parish are kept, and shall publish notice of such deposit, and of the time and mode of making appeals, and of the grounds on which an appeal is allowed by this Act to be made.

Deposit of duplicate of list in each parish.

16. The certified valuation list so sent to the clerk of the managers of the metropolitan asylum district (*d*) by the assessment committee shall be deposited at the office of such managers (*d*), and within the time in this Act mentioned shall be returned by such clerk to the same assessment committee.

Deposit of list at office of the managers of metropolitan asylum district.

17. The clerk of the managers of the metropolitan asylum district (*d*) shall, within the time in this Act mentioned, cause the totals of the gross and rateable values of all the valuation lists to be printed, and a printed copy of all such totals (*c*) to be sent to every assessment committee, and the overseers of every parish in the metropolis and in every county in which any parish to which any of such totals relate is situate, to the clerks of the peace for every such county, to the Commissioner of the Metropolitan Police, the Corporation of the City of London, the Metropolitan Board of Works, every district board in the metropolis, and the Poor Law Board. Every assessment committee, overseer, and ratepayer within the metropolis, and every such county shall respectively be entitled to have printed copies of such totals on payment of one penny for each copy of all the said totals.

Printing and distribution of totals of gross and rateable value in valuation list

APPEALS—SPECIAL SESSIONS.

18. In every petty sessional division in the metropolis the justices of the peace acting in and for such division shall, in every year at the time mentioned in this Act, hold a special sessions for hearing appeals under this Act against the valuation lists of the several parishes within such division.

Holding of special sessions to hear appeals.

19. Any ratepayer (*e*) and any overseers of a parish, so far as respects the valuation list of such parish, and any surveyor of taxes, so far as respects the valuation list of any parish in the petty sessional division, may, if he or they feel aggrieved by any decision of the assessment committee on an objection made with respect to the unfairness or incorrectness of the valuation of any hereditament included in such list, but not otherwise, appeal against such decision to the special sessions. The right to appeal to special sessions shall not deprive a person of any other right of appeal conferred on him by this Act.

Persons entitled to appeal to special sessions.

(*c*) See also 38 & 39 Vict. c. 33, *infra*, p. 792, and 59 & 60 Vict. c. 16, s. 5 (*b*), *infra*, p. 803.

(*d*) Now the London County Council: see 51 & 52 Vict. c. 41, s. 44, *infra*, p. 796.

(*e*) See also 47 & 48 Vict. c. 5, s. 2, *infra*, p. 794.

Extent of jurisdiction of special sessions.

20. The justices in special sessions under this Act shall not hear any appeal touching any matter with respect to which notice of appeal to the general assessment sessions has been served in manner prescribed by this Act, and shall not hear any appeal touching any part or alter any part of the valuation list except the part relating to the value of an hereditament; and a decision of such justices and an alteration by them of the value of an hereditament in the valuation list of any parish shall affect only the rights of the ratepayers of such parish among themselves, and shall not of itself in any way alter the totals of the gross or rateable value of such list as settled by the assessment committee, but may form a reason for appeal against such totals to the assessment sessions and superior court as hereinafter mentioned.

Powers of special sessions.

21. The justices in special sessions under this Act may adjourn their court from time to time, as may be necessary for the performance of their duties under this Act. They shall have with respect to the attendance and examination of witnesses, the taking of evidence, the keeping order in court, the enforcing their orders, and all matters necessary for the execution of their duties under this Act, the same powers and jurisdiction as if they were assembled in petty sessions.

Notice by special sessions of time of sitting.

22. The justices in special sessions shall send a written notice of the time and place at which they will hold a special sessions for the purpose of hearing appeals with respect to any parish to the overseers of such parish, who shall publish it as soon as it is received by them.

APPEALS—ASSESSMENT SESSIONS (*f*).

Court of general assessment sessions.

23. For the purpose of hearing appeals under this Act against any valuation list in the metropolis, the justices of the peace appointed as herein-after mentioned shall at the time mentioned in this Act assemble and hold a court of general assessment sessions (in this Act referred to as the assessment sessions).

Appointment of members of general assessment sessions.

24. The justices who are to form the court of general assessment sessions shall be appointed annually as follows :

1. Three justices of the peace of the county of Middlesex (of whom the assistant judge of the court of the sessions of the peace of the said county shall be one) shall be appointed by the court of general quarter sessions or general sessions of the peace for the county of Middlesex :
2. Two justices of the peace of the county of Surrey shall be appointed by the court of general or quarter sessions of the peace for the county of Surrey :
3. Two justices of the peace of the county of Kent shall be appointed by the court of general sessions for the county of Kent :
4. Two justices of the peace of the city of London shall be appointed by the court of the mayor and aldermen of the city of London in the inner chamber :

The said justices shall be appointed in the month of October in every year, or at such other time as may be from time to time fixed by the appointing

(*f*) The London quarter sessions were substituted for the assessment sessions by 51 & 52 Vict. c. 41, s. 42 (10), *infra*, p. 796.

body. They shall hold office for twelve months beginning on the first of November, and any casual vacancy may be filled up by the appointing body.

25. The justices in assessment sessions (*g*) may from time to time appoint, with the consent of the Poor Law Board, a clerk, and other persons to assist them in the performance of their duties under this Act, and may assign him or them such remuneration and such duties as the Poor Law Board may approve. Officers of general assessment sessions.

26. The justices in assessment sessions (*g*) may from time to time appoint one of their own number to act as their chairman, who shall have a second or casting vote, and they may from time to time determine on their quorum so that it be not less than three. Chairman, quorum, and powers of general assessment sessions.

The court of general assessment sessions (*g*) may adjourn from time to time, as may be necessary for the performance of their duties under this Act, and (for the purpose of giving judgment only) from place to place in the metropolis. They shall with respect to the attendance and examination of witnesses, to the taking of evidence, to the keeping of order in court, to contempt of court, to the enforcement of their orders, and to all matters necessary for the execution of their duties under this Act, have the same jurisdiction and powers and be in the same position as a court of quarter sessions; and, subject to the express provisions of this Act, shall conduct their proceedings, be convened, and be in the same position, as near as may be, as if they were a court of quarter sessions.

27. The justices in assessment sessions (*g*) may, with the approval of one of her Majesty's principal Secretaries of State make orders from time to time for the purpose of regulating the proceedings on appeals to them under this Act, and for determining the recognizances (if any) to be entered into by appellants in the case of appeals either to special sessions or to the assessment sessions. Orders as to proceedings and recognizances on appeals.

28. The justices in assessment sessions (*g*) may make a table of the fees which in their opinion should be paid to the clerks of special sessions and to the clerk of assessment sessions in the case of appeals under this Act, and shall lay such table before one of her Majesty's principal Secretaries of State in the same manner as the justices at quarter sessions may make and lay before such Secretary of State a table of fees, and all the provisions of section thirty of the Summary Jurisdiction Act, 1848 (which section relates to a table of fees and to the prohibition of clerks taking other fees), shall apply in the case of a table of fees made, and the business done by the said clerks under this Act. Fees on appeals under Act. 11 & 12 Vict. c. 43.

All fees paid in the case of appeals to the assessment sessions (*g*) shall be paid to the account of the receiver of the Metropolitan Common Poor Fund, and shall be so paid and taken and accounted for in such manner as the Poor Law Board may from time to time by order prescribe.

29. The justices in assessment sessions (*g*) shall from time to time appoint the place in the metropolis where the appeals relating to each parish in the metropolis are to be heard, and may, if they think fit, divide the metropolis into districts for the purpose of appeals, and appoint one or more places for every such district. Places for hearing appeals.

(*g*) Now the London quarter sessions: *vide infra*, p. 796.

Public notice of times of holding courts to be given.

30. The justices in assessment sessions (*h*) shall cause public notice to be given of the several times at which they will sit at the several places appointed for the hearing of appeals; such notice may be given under the hand of their clerk, and shall be given by advertisement in some newspaper circulating generally in the metropolis, and by sending a copy of such notice to every surveyor of taxes in the metropolis, to every assessment committee which would have a right to appeal at such court, and to the overseers of every parish to which any appeal relates, and to all the parties to the appeal. The overseers shall publish the notice as soon as it is received by them.

Summons of certain officers as witnesses.

31. The justices in assessment sessions (*h*) may order any clerk to the Commissioners of Taxes, any surveyor of taxes, clerk of assessment committee, overseer, assistant overseer, or like officer in the metropolis to produce any documents relating to rates or taxes which such justices may consider necessary for determining an appeal, and do not relate to profits of trade or of concerns in the nature of trade.

Any person who refuses, after tender of a reasonable sum for his expenses, to obey any order under this section shall be liable (on summary conviction before the justices in assessment sessions or any other two justices) to a penalty not exceeding five pounds.

Persons entitled to appeal to assessment sessions.

32. Any ratepayer (*i*) and any surveyor of taxes, and any overseer, with the consent of the vestry of his parish, who may feel aggrieved by any decision of the assessment committee, on an objection made before them to which he was a party, or by any decision of special sessions, whether he was a party or not, may appeal against such decision to the assessment sessions (*h*).

Any assessment committee in the metropolis, or in the county in which the parish to which the appeal relates is situate, any overseers in the metropolis or such county, with the consent of the vestry of their parish, any ratepayer (*i*) in the metropolis or such county, and any body of persons authorised by law to levy rates or require contributions payable out of rates in the metropolis or such county, may appeal to the assessment sessions (*h*), if they or he feel aggrieved by reason—

- (1) of the total (*k*) of the gross value of any parish being too high or too low;
- (2) of the total (*k*) of the rateable value of any parish being too high or too low; or
- (3) of there being no approved valuation list for some parish.

PROCEEDINGS ON APPEALS.

Notice of appeal to special or assessment sessions.

33. Notice in writing of every appeal (*l*), whether to special sessions or the assessment sessions (*h*), specifying the correction which the appellant desires to have made in the valuation list, must be served, within the time in this Act mentioned, on the following persons; namely,

in all cases on the surveyor of taxes of the district to which the appeal relates, and on the clerk of the assessment committee which approved the list wholly or partly questioned by the appeal:

(*h*) Now the London quarter sessions: *vide infra*, p. 796.

(*i*) See also 47 & 48 Vict. c. 5, s. 2, *infra*.

(*k*) See also 38 & 39 Vict. c. 33, *infra*.

(*l*) As to including several separate assessments under one notice of appeal, see 47 & 48 Vict. c. 5, s. 3, *infra*.

when the appeal relates to the unfairness or incorrectness of the valuation of, or to the omission of an hereditament occupied by any person other than the appellant, or to the incorrectness of any matter stated in the list with respect to any such hereditament, then on such person :

if an assessment committee or a surveyor of taxes is the appellant, then also on the overseers of the parish to which the appeal relates :

Provided that it shall not be necessary to serve any notice of appeal on the surveyor of taxes in any case in which the appeal relates only to the rateable value of any hereditament.

The clerk of the assessment committee, on receiving notice of an appeal, shall forthwith serve notice thereof on the clerk of the special sessions or of the assessment sessions (*m*), as the case may require.

34. The justices in special sessions and in assessment sessions (*m*) respectively shall, in open court, hear and determine all appeals brought before them in such order as they may respectively from time to time appoint. They may adjourn the hearing from time to time, and to any day not later than the day before which all appeals to them are required by this Act to be heard ; and in the case of assessment sessions for the purpose of obtaining the decision of any superior court to any day necessary for that purpose ; and if from accident or mistake due notice of appeal has not been given, or if an additional notice of appeal appears to be required, they may, if they think it just, order notice of appeal to be given. They may confirm or alter the valuation list, so far as it is questioned by the appeal, in such manner as they think just, but shall not make any alteration in contravention of this Act. The clerk of the assessment committee, or some deputy allowed by the assessment committee, shall attend the court with the valuation list to which the appeal relates, and any alteration shall be made by the justice acting as chairman of the sessions in that list, and the said justice shall place his initials against such alteration.

Sessions to hear and determine appeals, and alter list accordingly.

35. If it appears to the justices in assessment sessions (*m*) on any appeal that there is no approved valuation list for some parish they may appoint some proper person (with such remuneration as they may appoint) to make a valuation list. Such person shall have for that purpose the same powers and duties as overseers.

Making of valuation list where none approved.

The valuation list so made shall be deposited and otherwise made known to the persons interested in such manner as the court may direct, but in manner as near as may be as is provided in this Act with respect to the list originally made.

The cost of making such valuation list shall be paid by the assessment committee who failed to approve the list, and shall be deemed part of their expenses under the principal Act.

36. If any of the parties to the appeal apply to the justices in assessment sessions (*m*) to direct a valuation of any hereditament with respect to which any appeal may be made, and if such applicant or applicants give such security as the court think proper to pay the costs of the valuation, the court may, in their discretion, appoint some proper person to make such valuation.

Assessment sessions may, on application of party to appeal, order valuation.

37. Where the court appoint a person to make a valuation list or a valuation, they may fix some subsequent day, either before or after the day

Adjournment to receive valuation list or valuation

(*m*) Now the London quarter sessions : *vide infra*, p. 796.

before which all appeals are required by this Act to be heard, for receiving such valuation list or valuation, and may adjourn the hearing to that day.

Valuation to be in writing,

38. The person so appointed to make a valuation shall make his valuation in writing signed by him, showing the particulars of the hereditaments comprised therein, and the amounts at which he has valued the same respectively.

person making it to have power to enter.

Such person may at all reasonable times, with or without assistants, enter upon any of the hereditaments directed to be valued, and may do thereon all acts necessary for completing the valuation.

Costs of appeal.

39. The costs of any appeal, including the costs of any such valuation as aforesaid, shall be in the discretion of the justices in special or assessment sessions (*n*) (as the case may be), and shall be awarded by them to be paid by such parties to the appeal, and in such proportions, as they think just.

Costs (including the costs of making a valuation) so ordered to be paid may be recovered as if they had been awarded by a court of quarter sessions, and when ordered to be paid by parties other than a ratepayer shall be paid as in this Act mentioned.

Appeal from decision of assessment sessions on points of law.

40. The same proceedings may be had by special case and certiorari or otherwise, for questioning any decision of the justices in assessment sessions (*n*), as may be had for questioning any decision of the justices in general or quarter sessions, provided that every such certiorari shall be sued out within three months after the decision is given.

At any time after notice given of appeal under this Act to the assessment sessions, it shall be lawful for the parties, by consent and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of any of those courts, and to agree that a judgment in conformity with the decision of that court, and for such costs as that court may adjudge, may be entered on the application of either party at the meeting of the justices in assessment sessions next or next but one after such decision has been given, and such judgment may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the assessment sessions upon an appeal duly brought before them and adjourned; and the justices shall, if necessary, hold a sessions or an adjourned sessions for this purpose.

Notice in writing of the decision of any superior court in pursuance of this section shall be served by the clerk of the assessment sessions on the assessment committee which approved the list questioned on the appeal to such court.

Notice of alteration of list to be sent to overseers.

41. Notice of every alteration in the valuation list, which alteration is made in consequence of any decision on any appeal to the special sessions, assessment sessions (*n*), or a superior court, shall, as soon as possible, be sent in writing by the clerk of the assessment committee to the overseers and surveyor of taxes of the parish and district respectively to which the list which is so altered relates, and such alteration shall be entered by the clerk of the assessment committee and by the overseers on the duplicates respectively deposited with them.

Notice of every alteration in the total of the gross and rateable value of any valuation list, which alteration is made in consequence of any decision on any appeal to the assessment sessions (*n*) or a superior court, shall as

(*n*) Now the London quarter sessions: *vide infra*, p. 796.

soon as possible be sent in writing by the clerk of the assessment committee to the clerk of the managers of the metropolitan asylums district (*o*) ; and the clerk of such managers shall send in writing such altered total to every person and body of persons who has power to levy or make any rate or assessment or require any contribution based on such total.

TIMES FOR PROCEEDINGS.

42. With respect to the times within which proceedings under this Act and the Acts incorporated herewith are to be done, the following provisions shall have effect ; that is to say,

Times within which proceedings in making valuation list are to be done.

- (1) The overseers shall make and deposit the valuation list before the first day of June in the first year after the passing of this Act :
- (2) The overseers shall transmit the valuation list to the assessment committee not sooner than fourteen and not later than seventeen days after notice is given of the deposit of such list :
- (3) Notice of any objection by any person other than the surveyor of taxes and the overseers shall be given before the expiration of twenty-five days after the list is deposited :
- (4) The assessment committee shall revise the valuation list before the first of October in the same year, and before the same day, but not less than sixteen days after the transmission of the list to them by the overseers, shall hold a meeting for hearing objections to such list :
- (5) The assessment committee shall give notice of a meeting for hearing objections to a list not less than sixteen days before such meeting :
- (6) Notice of objection with respect to any list by the surveyor of taxes and by the overseers shall be given not less than seven days before the meeting at which objections to such list will be heard by the assessment committee :
- (7) The assessment committee shall send the valuation list to be re-deposited within three days after it is approved by them, and shall appoint a day not less than fourteen nor more than twenty-eight days after such re-deposit for hearing objections to the alterations, of which objections seven days notice shall be given by the objector :
- (8) The assessment committee shall finally approve and send the valuation list to the overseers, and the clerk of the managers of the metropolitan asylum district (*o*), before the first of November in the same year :
- (9.) Notices of appeal to special sessions shall be given on or before the twenty-first day of November in the same year :
- (10) The justices may hold the special sessions at any time after the thirtieth of November in the same year, which will enable them to determine all appeals before the ensuing first of January :
- (11) The clerk of the said managers (*o*) shall send out the printed totals (*p*) before the first of December in the same year, and shall return the valuation list to the assessment committee not sooner than fourteen nor later than twenty-one days after the totals are sent out :

(*o*) Now the clerk of the London County Council : see 51 & 52 Vict. c. 41, s. 44 *infra*, p. 796.

(*p*) See also 59 & 60 Vict. c. 16, s. 5, *infra*, p. 803 ; and 38 & 39 Vict. c. 33, *infra*, p. 792.

- (12) Notices of appeals to assessment sessions (*q*) shall be given on or before the fourteenth of January in the same year :
- (13) The justices may hold the assessment sessions (*q*) at any time after the first of February in the same year, which will enable them to determine all appeals (except where a valuation list or valuation is ordered) before the ensuing thirty-first of March :
- (14) Notice of the times at which the assessment sessions (*q*) will be held at each place shall be given by the clerk ten days at least before the first court is held.

EFFECT OF VALUATION LIST.

Duration of valuation list.

43. The valuation list as approved by the assessment committee, and, if altered on any appeal under this Act to any sessions or a superior court, as so altered, shall come into force at the beginning of the year (commencing on the sixth of April) succeeding that in which it is made, and shall last for five years subject to any alterations that may be made by any supplemental or provisional list as herein-after mentioned.

Rate to be levied notwithstanding appeal.

44. Notwithstanding any appeal under this Act which may be pending at the commencement of the year, the valuation list shall come into force unaltered, and every assessment contribution rate and tax in respect of which the valuation list is conclusive shall be made required levied and paid in accordance with such valuation list ; and where in consequence of the decision on any appeal under this Act to assessment sessions (*q*) or a superior court an alteration in such valuation list is made which alters the amount of the assessment contribution rate or tax levied thereunder, the difference, if too much has been paid, shall be repaid or allowed, and, if too little, shall be deemed to be arrears of the assessment contribution rate or tax (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

Valuation list to be conclusive for purposes of certain rates, taxes, and qualifications.

45. The valuation list for the time being in force shall be deemed to have been duly made in accordance with this Act and the Acts incorporated herewith, and shall for all or any of the purposes in this section mentioned be conclusive evidence of the gross value and of the rateable value of the several hereditaments included therein, and of the fact that all hereditaments required to be inserted therein have been so inserted ; that is to say,

- (1) For the purpose of any of the following rates which are made during the year that the list is in force, namely, the county rate, the metropolitan police rate, the church rate, the highway rate, the poor rate, the police, sewers, consolidated and other rates in the city of London, the sewers, lighting, general, and other rates levied by order of district boards or vestries, the main drainage improvement and other rates, and sums assessed on any part of the metropolis by the Metropolitan Board of Works, assessments for contributions under the Metropolitan Poor Act, 1867, and every other rate assessment and contribution levied made and required in the metropolis on the basis of value :

30 & 31 Vict.
c. 6.

(*q*) Now the London quarter sessions : *vide infra*, p. 796.

(2) For the purpose of any of the following taxes which become chargeable during the year that the list is in force, namely,

(a) The tax on houses levied under the House Tax Act, 1851, 14 & 15 Vict. and the Acts therein incorporated or referred to : c. 36, etc.

(b) Any tax assessed in pursuance of the Income Tax Act, 1842, 5 & 6 Vict. and any Acts continuing or amending the same, on any c. 35, etc. lands tenements and hereditaments, in all cases where the tax is charged on the gross value, and not on profits :

(3.) For the purpose of determining, so far as it is applicable, the value of any hereditament included therein for the purposes of the Acts relating to the sale of excisable liquors, to the qualification of a juror, to the qualification of a vestryman, and an auditor of accounts under the Metropolis Management Act, 1855, and to the qualification of a guardian and of a manager under the Poor Law Amendment Act, 1834, or the Metropolitan Poor Act, 1867, at any time at which such value is required to be ascertained : 18 & 19 Vict. c. 120. 4 & 5 Will. 4, c. 76. 30 & 31 Vict. c. 6.

And in construing the Metropolitan Police Act, 1829, and the Acts amending the same, the last valuation for the time being acted upon in assessing the county rate shall be deemed to mean the valuation list for the time being in force : 10 Geo. 4, c. 44

And in construing the County Rates Act, 1852, and Acts referring to the valuation estimate basis or standard for the county rate, the valuation estimate basis or standard shall be deemed to be the rateable value stated in such list : 15 & 16 Vict. c. 81, etc.

And in construing the House Tax Act, 1851, and the Acts therein incorporated or referred to, the full and just yearly rent shall be deemed to be the gross value stated in such list : 14 & 15 Vict. c. 36, etc.

And in construing the Income Tax Act, 1842, and any Acts continuing or amending that Act, with respect to Schedules A. and B. thereof, annual value shall be deemed to mean the gross value stated in such list (*r*). 5 & 6 Vict. c. 35, etc.

REVISION OF VALUATION LIST.

46. Every valuation list shall be revised in manner directed by this Act, and such revision in every period of five years (the first of such periods beginning with the sixth of April one thousand eight hundred and seventy-one) shall be conducted as follows : Mode of revising valuation list.

(1) In each of the first four years of such period a supplemental list shall, if necessary, be made out in the same form as the valuation list, and shall show all the alterations which have taken place during the preceding twelve months in any of the matters stated in the valuation list, but shall contain only the hereditaments affected by such alterations. If no alteration has taken place which makes a supplemental list necessary, the overseers shall send a certificate to that effect to the assessment committee in place of such list, which certificate may be in the form contained in the second schedule to this Act :

(2) In the fifth year of every such period the overseers shall make a new valuation list :

(*r*) See now 57 & 58 Vict. c. 30, s. 35, *supra*, p. 594, as to income tax.

- (3) The same regulations shall be observed and the same proceedings shall be had in the case of a supplemental list and a new valuation list as are directed by this Act and the Acts incorporated herewith in the case of the valuation list made in the first year after the passing of this Act :
- (4) A supplemental list and a new valuation list shall come into force at the beginning of the year succeeding that in which they are respectively made, in the same manner and subject to the same conditions as the valuation list made in the first year after the passing of this Act :
- (5) In each of the last four years of such period the valuation list which was in force on the day before the commencement of each such year, together with and as altered by the supplemental list, if any, which comes into force at the commencement of such year, shall be the valuation list which is in force during that year :
- (6) A new valuation list when it comes into force shall supersede the valuation list which was in force during the fifth year of such period.

Provision
for valuing a
house built
between the
times at
which the
valuation
list is made.

47. If in the course of any year the value of any hereditament is increased by the addition thereto or erection thereon of any building, or is from any cause increased or reduced in value, the following provisions shall have effect :

- (1) The overseers of the parish in which such hereditament is situate may, and on the written requisition of the assessment committee or of any ratepayer of the union or of the surveyor of taxes for the district shall, send to the assessment committee a provisional list containing the gross and rateable value as so increased or reduced of such hereditament :
- (2) A copy of the requisition shall be sent by the person making it to the clerk of the assessment committee, and if within fourteen days after the requisition has been served on the overseers they make default in sending such provisional list he shall forthwith summon the assessment committee, and the assessment committee shall appoint a person to make such provisional list, in the same manner as is in this Act provided in the case of the overseers failing to transmit a valuation list :
- (3) On the receipt of the list the clerk of the assessment committee shall serve on the surveyor of taxes for the district a copy of the list, and shall serve on the occupier of any hereditament to which the list relates a copy of so much thereof as relates to that hereditament. Every copy shall be accompanied by a notice specifying a day, being not less than fourteen days after the date of the service of the notice on or before which any objection to the provisional list may be made, and stating the mode in which an objection is to be made. Such copy and notice shall be served in the same way as notices by an assessment committee are served :
- (4) An objection may be made to any such provisional list by the said occupier, and by the surveyor of taxes, or by either of them, by

notice thereof in writing being served on the clerk of the assessment committee, on the overseers, on the surveyor of taxes, and on the occupier, or on such of them as the case may require :

- (5) The clerk of the assessment committee, on the receipt of the notice of any objection, shall forthwith summon a meeting of the committee, and give notice of the time and place of such meeting to the overseers, to the surveyor of taxes, and the occupier :
- (6) The committee shall hear and determine on the objection in the same manner as if it were an objection to a valuation list, and may make such order as they think just :
- (7) If no objection is made, then on the expiration of the time for making objections, or if an objection is made then as soon as the assessment committee have determined on the objection, the assessment committee shall cause a copy to be made of the provisional list, with any alteration made in it by the committee, and shall return the list and the copy thereof, after being dated and signed by their clerk, to the overseers :
- (8) A provisional list, signed as aforesaid, shall have operation from the date of the service by the clerk of the assessment committee of a copy of the list and notice on the occupier, and shall continue in force until the first list (supplemental or other) which is subsequently made comes into force :
- (9) Upon a provisional list coming into operation the overseers shall make such entries in the rate book for the then current poor rate as will bring the same into conformity with such list, and shall also enter therein the date at which such list is to come into operation, and shall charge the occupier of such hereditament with a proper proportion of such current poor rate, regard being had to the time which has elapsed between the making of such rate and the said date and to the rateable value stated in such provisional list, and such occupier shall be considered as actually rated for such sum from the said date, and be liable to pay the same, and the same may be enforced accordingly :
- (10) A provisional list during the time that it is in force shall be deemed to form part of the valuation list for the time being in force, and shall (so far as is necessary) be substituted for so much of that valuation list as relates to the same hereditament, and every rate and tax in respect of which the valuation list is conclusive, which are respectively made or charged after the provisional list comes into force, and the proportion of the current rate charged as before provided in this section, shall be levied accordingly ; but if when the next revision of the valuation list takes place the list as approved and altered on appeal contains a smaller value for the hereditament comprised in a provisional list than the value stated in such provisional list, the amount of rate or tax which has been overpaid in consequence of the larger value having been stated shall be repaid or allowed :
- (11) Nothing in this section shall affect the value on which any rate is made or sum is assessed or contribution required which is made, assessed, or required on the totals of the gross or rateable value of parishes or unions.

EXPENSES.

Costs of appeal, &c.

48. The costs of an appeal awarded against or incurred by any assessment committee or overseers shall be deemed to be expenses incurred under this Act and the Acts incorporated herewith, and shall be raised and paid accordingly.

Any costs or expenses awarded against or incurred by any surveyor of taxes shall be defrayed in the same manner as expenses are directed to be defrayed by the Acts relating to the taxes in respect of which the valuation list is made conclusive.

Allowances by Inland Revenue for expenses.

49. The Commissioners of Inland Revenue may make such allowances as they think fit for remunerating any person employed by them in the execution of this Act, and for the discharge of any costs or expenses incurred by him.

Expenses.

50. The expenses of the assessment sessions and such remuneration as the Poor Law Board may from time to time allow to the clerk of the managers of the metropolitan asylum district (*s*), the clerk of the assessment sessions, and persons appointed to assist the assessment sessions as provided by this Act, and such costs and expenses incurred by such clerks and persons under this Act as the Poor Law Board may allow, after such audit as the Poor Law Board may direct, shall be paid by the receiver of the Metropolitan Common Poor Fund out of any monies for the time being in his hands, and shall be paid at such times and in such manner and upon such precept of the Poor Law Board as the Poor Law Board may from time to time prescribe, and the Poor Law Board may require contributions for the purpose of raising such remuneration, expenses, and costs.

RULES FOR FORMATION OF VALUATION LIST.

Form and contents of valuation list.

51. The valuation list shall be made out in the form given in the second schedule to this Act (*t*).

The overseers shall not include in such valuation list any hereditaments (except tithes or payment in lieu of tithes) which are charged according to rule two in section sixty of the Income Tax Act, 1842, but shall include tithes and payments in lieu of tithes and every hereditament in their parish, and shall enter every hereditament in the valuation list in accordance with the classes mentioned in the third schedule to this Act, so that the deductions to be made in ascertaining the rateable value may be calculated in accordance with that schedule.

5 & 6 Vict. c. 35.

Deductions for rateable value.

52. The percentage or rate of deductions to be made from the gross value in calculating the rateable value for the purposes of this Act shall not exceed the amounts in the third schedule to this Act, so far as the same are applicable.

Amount of gross value specified by the surveyor of taxes to be inserted, unless disproved.

53. When a surveyor of taxes gives notice of objection or of appeal, the amount specified in the notice as being in his judgment the gross value of any hereditament referred to in the notice shall be inserted in the valuation list by the assessment committee, special sessions, or assessment sessions, unless it is proved to the satisfaction of the assessment committee, special sessions, or assessment sessions, that such amount ought not to be so inserted.

(*s*) Now the clerk of the London County Council : 51 & 52 Vict. c. 41, s. 44, *infra*, p. 796.

(*t*) See also Schedule W 2 to the Agricultural Rates Order, 1896, *infra*, p. 816.

54. Nothing contained in this Act or the Acts incorporated herewith shall affect any exemption or deduction from or allowance out of any rate or tax whatever, or any privilege of or provision for being rated or taxed on any exceptional principle of valuation.

Saving of exemptions and exceptional principles of valuation.

RETURNS.

55. In every year in which a new valuation list is made, or in the month of March preceding any such year, every person who is liable to be charged with any rate or tax in respect of which the valuation list is made conclusive shall, when required, make to the overseers of his parish such statement or return as a person chargeable under the Income Tax Act, 1842, and the Acts amending the same is bound to make (u).

Occupier to make returns.

5 & 6 Vict. c. 35.

56. For the purpose of securing the proper making of such returns, the surveyor of taxes shall in the month of February preceding send to the overseers of each parish in his district a sufficient number of printed forms and notices, and the overseers, within a month after the receipt thereof, shall serve a notice and form on every person in their parish required by this Act to make a return; and every person required by this Act to make a return shall make it within twenty-one days after the service of a notice and form on him.

Surveyor of taxes to supply notices and forms for returns to overseers, who are to serve them.

The forms and notices shall be such as are prescribed by the Income Tax Act or the Acts amending the same, or as the Treasury may from time to time prescribe, and any such form duly filled up and signed shall be deemed to be a sufficient return.

5 & 6 Vict. c. 35.

The return shall be delivered to the overseers of each parish, and together with the valuation list shall be sent by them to the surveyor of taxes, and by the surveyor of taxes to the assessment committee.

57. An assessment committee may, by order, require any person who is the owner or occupier or reputed owner or occupier of any hereditament in their union to send them a return in writing of all or any of the following things; viz., of the rent receivable or payable by him (as the case may be) for such hereditament, and of the person entitled to any tithe rentcharge charged on such hereditament, and of the amount of the same, and of the several persons by whom any tithe rentcharge is paid to him, and of the amounts paid by each such person, and of any other particulars respecting such hereditament as are required for the due execution of this Act and the Acts incorporated herewith. And every such owner or occupier shall obey such order within fourteen days after the service thereof on him (x).

Assessment committee may require returns from owner and occupier.

58. If any person wilfully refuses or neglects to make any return lawfully required under this Act within the times respectively limited by this Act in that behalf, he shall be liable, on summary conviction, to a penalty not exceeding five pounds.

Penalty for no or false returns.

If any person wilfully makes or causes to be made a false return, he shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

(u) As to returns by owners, see 47 & 48 Vict. c. 5, s. 2, *infra*, p. 794.

(x) The London County Council may require guardians, overseers and other rating authorities to return such copies of valuation lists, reports, and accounts, and other information with respect to rating matters, as the council may require for purposes of statistical information: see the London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. cxxi.), s. 14.

MISCELLANEOUS.

Provision
for cases
where no
guardians
and where
no overseers.

59. With respect to any parish which is not included in any union of parishes, and in which there is no board of guardians, the following provisions shall have effect :

- (1) The assessment committee of the adjoining union shall act as the assessment committee of that parish, and where there is more than one such adjoining union the Poor Law Board shall determine the assessment committee which is to act for such parish :
- (2) Every such parish shall, for the purposes of this Act and the Acts incorporated herewith, but not for any other purpose, be deemed to be within the union of the assessment committee which acts for it :
- (3) The masters of the bench, treasurer, governors, or other body of persons in such parish, may, at the time appointed for the election of an assessment committee, appoint a person to be a member of such assessment committee in addition to the number elected under this Act and the Acts incorporated herewith :
- (4) Where there are no overseers the assessment committee shall appoint some person to perform the duties of the overseers under this Act and the Acts incorporated herewith, and may award him such remuneration as they think fit ; and the person so appointed shall perform those duties and shall, for that purpose, have all the powers of overseers :
- (5) A proportionate share of the expenses of the assessment committee under this Act and the Acts incorporated herewith, and any remuneration paid to or expenses incurred by the person appointed by them under this or any other section to make a valuation list, shall be charged on such parish, and the sums so charged shall be paid by the masters of the bench, treasurer, governor, or other body of persons ; and section sixty-six, sixty-seven, and sixty-eight of the Metropolitan Poor Act, 1867, shall apply to such sums in the same manner as if the assessment committee and their clerk were the Poor Law Board and the receiver mentioned in those sections.

30 & 31 Vict.
c. 6.

Provision
where vestry
are the
overseers.

60. Where the vestry or the guardians of any parish perform the duties of overseers with respect to a valuation list under this Act the list shall be signed by the vestry clerk or the clerk of the guardians.

Guardians
may appoint
a paid valuer
to assist the
assessment
committee.

61. The guardians may, upon the application of the assessment committee, after notice sent in the manner required by the principal Act, appoint some competent person to assist the committee in the valuation of the hereditaments in the union for such period as they see fit, at a salary or other settled remuneration, to be paid out of the common fund.

Assessment
committee
and overseers
may give
security for
costs of
valuation.

62. Every assessment committee, with the consent of the guardians, and every overseer, with the consent of the vestry of his parish, may, for the purposes of any application for a valuation on any appeal, give security for paying the costs of such valuation. An assessment committee may give such security and may appear on any appeal by their clerk, and shall indemnify the said clerk against all monies, losses, and costs paid or incurred by him in consequence of such security or appearance.

63. Any room maintained out of the proceeds of any rate levied wholly or partly in the metropolis may (with the consent of the person or body corporate having the control of it) be used for hearing appeals, and for other purposes of this Act. Use of public room for appeals, etc.

64. A valuation list may be proved by the production of a duplicate or copy of such list purporting to be certified to be a duplicate or a true copy by the clerk of the assessment committee that approved it, and such certificate shall state that the alterations (if any) made in the list in consequence of the decision on any appeal under this Act have been correctly made in the duplicate or copy so produced, and the clerk on application shall furnish a copy to any overseers on payment of a sum not exceeding the rate of three shillings for every hundred entries numbered separately. A provisional list may be proved by the production of a duplicate or copy thereof purporting to be certified to be a true copy by the clerk of the committee who signed it. Evidence of valuation list, etc.

65. All orders and notices under this Act and the Acts incorporated herewith shall be in writing or print, or partly in writing and partly in print, and if made or given by an assessment committee shall be sufficiently authenticated if signed by their clerk; and all orders, notices, and documents required by the same Acts to be served on or sent to any person or body of persons corporate or unincorporate may be either delivered to such person or the clerk of such body, or left at the usual place of abode of such person or clerk, or at the office of such clerk or body, or (if such abode or office cannot on reasonable inquiry be discovered) at the premises to which the order, notice, or document relates. Service of notices, etc., by post, etc.

They may also be served and sent by post, by a prepaid letter addressed to such person, or to the office of such body or to their clerk, and, if sent by post, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put into the post.

66. Any notice required by this Act to be published by the overseers shall, on the Sunday next following the receipt of such notice, or the document to which the notice refers, and the two following Sundays, be published by them in the manner in which notice of a rate allowed by justices is required to be published. Publication of notices by overseers.

67. Where any documents are required by this Act to be deposited in the same place in a parish in which rate books are kept, every ratepayer shall be at liberty to inspect and take copies of or extracts from such documents at any reasonable time, without fee or charge. Inspection, etc., of documents deposited with rate books.

68. The duplicate of the valuation list, approved by the assessment committee, and sent to the overseers, as directed by this Act, the notices of alterations made on any appeal under this Act, and any provisional list, shall for all purposes be deemed to be part of the rate books of the parish, and shall be produced by the overseers before the justices upon any application for allowance of rates, and on any appeal under this or any other Act, and on any other occasion if so required, on which they are bound to produce such rate books, and any overseer who fails to produce such list in accordance with the provisions of this section shall be liable on summary conviction to a penalty not exceeding five pounds. Valuation lists to be equivalent to rate books of parish.

The duplicate of the valuation list returned to the assessment committee by the clerk of the managers of the Metropolitan Asylum District, and other documents in the possession of the assessment committee in pursuance of this Act, shall be kept at the board room or other convenient place from time to time appointed by the guardians of the same union, but shall be deemed to be in the possession of the assessment committee, and shall be produced by their clerk to the district auditor whenever required by him.

Ratepayer, etc., may inspect documents, etc., in hands of clerk of managers or assessment committee.

69. Any ratepayer, overseer, clerk of an assessment committee, or surveyor of taxes in the metropolis may, at all reasonable times, without payment, inspect and take copies of and extracts from all valuation lists and documents which in pursuance of this Act are under the control of the clerk of the managers of the Metropolitan Asylum District, or of the clerk of the assessment sessions.

Any surveyor of taxes and any guardian and any overseer in a union, without payment, and any ratepayer in a union on payment of a fee not exceeding one shilling (to be carried to the common fund), may at any reasonable time inspect and take copies of and extracts from any valuation lists, notices of objection, returns, and other documents in the possession or under the control of the assessment committee of that union.

Any clerk of an assessment committee in the metropolis may inspect and take extracts from any valuation lists in the possession or under the control of the assessment committee of any other union in the metropolis.

Any person who hinders a ratepayer, overseer, clerk of an assessment committee, or surveyor of taxes from so inspecting or taking copies of or extracts from any valuation list or document, or demands where not authorized by this Act a fee for allowing him so to do, shall be liable on summary conviction to a penalty not exceeding five pounds for each offence.

70. [*Repealed, 47 & 48 Vict. c. 5, infra.*]

Amendment of error in rate by two justices.

71. Any person who feels aggrieved by reason of any clerical or arithmetical error in a rate in the metropolis may apply to two justices of the peace or a magistrate sitting at any police court in the metropolitan police district, who, after the applicant has given such notice to the overseers who made the rate and such persons as such justices or magistrates think just, may hear the case in like manner as in the case of summary proceedings, and amend the rate so far as respects such error.

Omissions from the rate.

72. Whenever the name of any person liable to be rated at the time the rate is made is omitted from any rate in the metropolis, or if any person is described in any such rate by a wrong name, the overseers may, after giving to such person seven clear days' notice of their intention, apply to any two justices or any police magistrate as aforesaid, who may hear the case in like manner as in the case of summary proceedings and insert the name so omitted, or correct the name so wrongly entered, and every such insertion and correction shall operate as if it had been part of the original rate (a): Provided that any person whose name is so inserted or corrected in any such rate may appeal against the same at the general quarter sessions of

(a) See *Mayor, etc. of Westminster v. Edgcome* (1901), Ryde & Konstam's Rat. App. (1894—1904) 257; *supra*, p. 664.

the peace which is holden next after such insertion or correction, in like manner as he might have appealed against the rate.

73. Every poor rate made in the metropolis after the fifth of April one thousand eight hundred and seventy-one shall contain the particulars specified in the fourth schedule to this Act (b), together with such other particulars as the Poor Law Board may from time to time by order direct, and the overseers shall sign the form of declaration which is given in that schedule before the rate is allowed by the justices. And the justices shall not allow any rate at the foot of which the said declaration has not been added and signed. Form of rate and declaration.

Any overseer who wilfully omits to make the said declaration or makes the same falsely shall be liable on summary conviction to a penalty not exceeding five pounds.

74. The entry of the proceedings of the assessment committee at any meeting, and of the names of the members who attend that meeting, may be signed by the chairman of the next meeting of the committee, and every entry and minute purporting to be so signed shall be received in evidence in the same manner as if such entry or minute had been signed by the chairman of the meeting at which the proceedings took place, and the members were present. Amendment of 25 & 26 Vict. c. 103, s. 11.

75. Nothing in this Act shall in any way alter or affect the mode of valuing or taxing any hereditament which is not included in any valuation list, or which is chargeable according to the profits and not according to the gross value, or the mode of charging the occupiers of land subject to a tithe rentcharge in respect of such tithe rentcharge. Saving of powers to value property not included in a valuation list.

76. Where for the purposes of the Acts relating to the duty on inhabited houses, or to the duties charged under Schedule B. of the Income Tax Act, 1842, or to the sale of exciseable liquors, it is necessary to make a separate valuation of any hereditament by reason of its not being separately valued in any valuation list, the value of such hereditament shall be ascertained in the same manner as if this Act had not passed. Separate assessment of houses for purposes of house duty, income tax, and Licensing Acts.

REPEAL OF ACTS.

77. The enactments specified in the fifth schedule to this Act, and so much of any other Acts, whether public or local and personal, as authorizes any valuation of hereditaments to be made for the purposes of any rate or tax in respect of which the valuation list is by this Act made conclusive, are hereby repealed, where they relate only to the metropolis absolutely, and in other cases so far as they relate to the metropolis : Provided—

1. That the provisions of the Acts so repealed shall remain in force until the provision or provisions substituted for them by this Act shall respectively come into operation :
2. That this repeal shall not affect the validity or invalidity of anything done or suffered under any of the said provisions while they remain in force, or any right or title acquired or accrued under any of the said provisions while they remain in force, or any remedy or proceeding in respect thereof.

(b) See also Schedule Y 2 to the Agricultural Rates Order, 1896, *infra*, p. 818.

FIRST SCHEDULE.

Date of Act.	Short title used in this Act.
10 Geo. 4. 44.	The Metropolitan Police Act
5 & 6 Vict. c. 35.	The Income Tax Act.
14 & 15 Vict. c. 36.	The House Tax Act.
15 & 16 Vict. c. 81.	The County Rate Act.

[Sects. 14, 51.]

SECOND SCHEDULE.

PART I.

VALUATION LIST (c) for [the parish or place for which the list is made]
in the Metropolitan Union of [or not being in Union] in the county
of .

Number.	Name of Occupier.	Name of Owner.	Description of Property.	No. of Class.	Name or Situation of Property.	Extent.	Gross Value as estimated by Overseers.	Gross Value as estimated by Surveyor of Taxes.	Rate of Deduction per cent.	Rateable Value.	Gross Value as finally determined by Assessment Committee.	Rateable Value as finally determined by Assessment Committee.

Signed this day of .
A.B. } Overseers of the poor of the
C.D. } parish aforesaid.

WE do hereby approve the above valuation list, and certify that in determining the gross and rateable value of the above hereditaments the provisions of the Valuation (Metropolis) Act, 1869, have been duly complied with.

Signed this day of .
A.B. } Members of the Assessment Com-
C.D. } mittee of the Union.
E.F. }

Note.—The two last of the above columns (for gross and rateable value as determined by Assessment Committee) must be filled up, and the totals of those columns must be added up after the objections to the alterations have (if any) been heard, and before the list is finally approved.

PART II.

Form of Certificate where no supplemental list is sent.

WE, the overseers of the parish of , do hereby certify that no alteration has taken place in the matters stated in the valuation list of this parish which renders a supplemental list necessary.

A.B. } Overseers of the parish of
C.D. }

(c) For the form of list in a parish in which there is any "agricultural land." as defined by the Agricultural Rates Act, 1896, see Schedule W 2 to the Agricultural Rates Order, 1896, *infra*.

THIRD SCHEDULE.

[Sects. 51, 2.]

Showing the several classes into which the hereditaments inserted in a valuation list under this Act are to be divided.

	Maximum Rate of Deductions.
	Per cent. or proportion.
Class 1. Houses and buildings, or either of them, without land other than gardens where the gross value is under 20 <i>l</i> . - - -	25 or $\frac{1}{4}$ th.
„ 2. Houses and buildings without land other than gardens and pleasure grounds valued therewith for the purpose of inhabited house duty where the gross value is 20 <i>l</i> . and under 40 <i>l</i> . - - - - -	20 or $\frac{1}{5}$ th.
„ 3. Houses and buildings without land other than gardens and pleasure grounds valued therewith for the purpose of inhabited house duty where the gross value is 40 <i>l</i> . or upwards - - - - -	16 $\frac{2}{3}$ or $\frac{1}{3}$ th.
„ 4. Buildings without land which are not liable to inhabited house duty and are of a gross value of 20 <i>l</i> . and under 40 <i>l</i> . - - - - -	20 or $\frac{1}{5}$ th.
„ 5. Buildings without land which are not liable to inhabited house duty and are of a gross value of 40 <i>l</i> . or upwards - - -	16 $\frac{2}{3}$ or $\frac{1}{3}$ th.
„ 6. Land with buildings not houses - - - - -	10 or $\frac{1}{10}$ th.
„ 7. Land without buildings - - - - -	5 or $\frac{1}{20}$ th.
„ 8. Mills and manufactories - - - - -	33 $\frac{1}{3}$ or $\frac{1}{3}$ rd.
„ 9. Tithes, tithe commutation rentcharge, and other payments in lieu of tithe - - - - -	To be determined in each case according to the circumstances and the general principles of law.
„ 10. Railways, canals, docks, tolls, waterworks and gas-works - - - - -	
„ 11. Rateable hereditaments not included in any of the foregoing classes - - - - -	

The maximum rate of deductions prescribed in this schedule shall not apply to houses or buildings let out in separate tenements, but the rate of deductions in such cases shall be determined as in classes 9, 10, 11.

FOURTH SCHEDULE.

[Sect. 73.]

FORM OF RATE.

[See now, Schedule Y 2, to Agricultural Rates Order, 1896, *infra*.]

RATE for the RELIEF of the POOR of the Parish of in the Union, and for other purposes chargeable thereon, according to law, made this day of in the year of our Lord 18 , after the rate of in the pound, which is estimated to meet all the expenses for the above purposes which will be incurred before the of next.

No.	Name of Occupier.	Name of Owner.	Description of Property Rated.	Name or Situation of Property.	Rateable Value.	Rate at in the Pound.

DECLARATION TO BE ADDED TO THE RATE.

WE, the undersigned, do hereby declare that one of us, or some person on our behalf, has examined and compared the several particulars in the respective columns of the above rate with the valuation list made under the authority of the Valuation (Metropolis) Act, 1869, and now in force in this parish (*or* township), and the several hereditaments are, to the best of our belief, rated according to the value appearing in such valuation list, and do declare that the total of the above rate amounts to pounds shillings and pence.

	}	Churchwardens.	}	Overseers.
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[Sect. 77.]

FIFTH SCHEDULE.

43 Geo. 3, c. 161.	<p>An Act for repealing the several duties under the management of the Commissioners for the Affairs of Taxes, and granting new duties in lieu thereof ; for granting new duties in certain cases therein mentioned ; for repealing the duties of excise on licenses, and on carriages constructed by coach-makers, and granting new duties thereon under the management of the said Commissioners for the Affairs of Taxes, and also new duties on persons selling carriages by auction or on commission</p> <p style="padding-left: 2em;">So much as relates to the mode of ascertaining the value of houses with respect to the value of which the valuation list is conclusive.</p>	}	in part, namely,—
48 Geo. 3, c. 55.	<p>An Act for repealing the duties of assessed taxes, and granting new duties in lieu thereof, and certain additional duties to be consolidated therewith ; and also for repealing the stamp duties on game certificates, and granting new duties in lieu thereof, to be placed under the management of the Commissioners for the Affairs of Taxes</p> <p style="padding-left: 2em;">So much as relates to the mode of ascertaining the value of houses with respect to the value of which the valuation list is conclusive.</p>	}	in part, namely,—
57 Geo. 3, c. 25.	<p>An Act to explain and amend an Act made in the forty-eighth year of his present Majesty for repealing the duties of assessed taxes, and granting new duties in lieu thereof ; and to exempt such dwelling-houses as may be employed for the sole purpose of trade, or of lodging goods, wares, or merchandise, from the duties charged by the said Act</p> <p style="padding-left: 2em;">So much as relates to the mode of ascertaining the value of houses with respect to the value of which the valuation list is conclusive.</p>	}	in part, namely,—
10 Geo. 4, c. 44.	<p>An Act for improving the police in and near the metropolis</p> <p style="padding-left: 2em;">So much of sections thirty and thirty-two as relates to the ascertaining the value of any hereditaments with respect to the value of which the valuation list is made conclusive.</p>	}	in part, namely,—
6 & 7 Will. 4, c. 96.	<p>An Act to regulate parochial assessments</p> <p style="padding-left: 2em;">Sections one, two, six, seven, and nine.</p>	}	in part, namely,—

- & 6 Vict. c. 35. An Act for granting to her Majesty duties on profits arising from property, professions, trades, and offices until the sixth day of April one thousand eight hundred and forty-five (in this Act called the Income Tax Act) - - - } in part, namely,—
 Section sixty. No. I.
 No. II. par. 1, 3.
 No. IV. par. 2, 4.
 No. V. (so far as respects the deductions allowed by this Act).
 Section sixty-three. No. X. par. 1, 2, 3, 4.
 Sections sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, seventy-eight, eighty-one, eighty-two, eighty-seven, and any other part which relates to the ascertaining of the value of lands, tenements, and hereditaments with respect to the value of which the valuation list is made conclusive.
- 14 & 15 Vict. c. 36. An Act to repeal the duties payable on dwelling houses according to the number of windows or lights, and to grant in lieu thereof other duties on inhabited houses according to their annual value (in this Act called the House Tax Act) - - - } in part, namely,—
 So much as relates to the mode of ascertaining the value of houses with respect to the value of which the valuation list is conclusive.
- 15 & 16 Vict. c. 81. An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales (in this Act called the County Rate Act) - - - } in part, namely,—
 So much of sections one to twenty, both inclusive, as relates to the preparation of a basis or standard of county rate for any part of the metropolis, and sections forty to forty-three, both inclusive.
- 16 & 17 Vict. c. 34. An Act for granting to her Majesty duties on profits arising from property, professions, trades, and offices - - - } in part, namely,—
 Sections thirty-two and forty-seven, and so much of the rest of the Act as relates to the mode of ascertaining the value of any hereditaments with respect to the value of which the valuation list is conclusive.
- 18 & 19 Vict. c. 120. An Act for the better local management of the metropolis (Metropolis Management Act, 1855) - } in part, namely,—
 So much of sections one hundred and seventy-five and one hundred and seventy-nine as relates to ascertaining the value of any hereditament with respect to the value of which the valuation list is conclusive.
- 20 & 21 Vict. c. 64. An Act for raising a sum of money for building and improving stations of the metropolitan police, and to amend the Acts concerning the metropolitan police - - - } in part, namely,—
 Sections eleven and twelve.
- 21 & 22 Vict. c. 33. An Act for the better management of county rates - - - } in part, namely,—
 Section one.
- 25 & 26 Vict. c. 102. An Act to amend the Metropolis Local Management Acts (The Metropolis Management Amendment Act, 1862) - - - } in part, namely,—
 So much of sections six, seven, and thirteen as authorizes or relates to the ascertaining the value of any hereditament with respect to the value of which the valuation list is conclusive, and so much of any Act as applies the provisions hereby repealed.

25 & 26 Vict. c. 103.	The Union Assessment Committee Act, 1862	- { in part, namely,—
	Sections three, fourteen, fifteen, the following words in section seventeen, “and a copy of such valuation list shall be forthwith delivered to the board of guardians,” sections twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven. section twenty-eight down to “schedule hereunto annexed,” sections twenty-nine, thirty-one. thirty-two, thirty-three, thirty-four, thirty-five. thirty-six, thirty-nine, forty-one, forty-two, forty-three, and forty-five.	
27 & 28 Vict. c. 39.	The Union Assessment Committee Amendment Act, 1864	- { in part, namely,—
	Sections one, nine, and eleven.	
29 & 30 Vict. c. 64.	An Act to amend the laws relating to the Inland Revenue	- { in part, namely,—
	Section seventeen. so far as it relates to the value of property.	
29 & 30 Vict. c. 78.	The County Rate Act, 1866	- { in part, namely,—
	Section one.	
31 & 32 Vict. c. 122.	The Poor Law Amendment Act, 1868	- { in part, namely,—
	Sections thirty, thirty-one, thirty-two, and thirty-eight.	

THE RATING ACT, 1874.

(37 & 38 VICT. c. 54.)

An Act to amend the Law respecting the Liability and Valuation of certain Property for the purpose of Rates. [7th August 1874.]

Short title.

1. This Act may be cited as “The Rating Act, 1874.”

Extent of Act.

2. This Act shall not apply to Scotland or Ireland.

Abolition of certain exemptions from rating.

3. Whereas by the Act of the forty-third year of the reign of Queen Elizabeth, chapter two, intituled “An Act for the relief of the poor,” it is provided that a poor rate shall be raised in every parish by taxation of, amongst other persons, every occupier of certain hereditaments in such parish ; and it is expedient to extend the said Act, and the Acts amending the same (which Act and Acts are in this Act referred to as the Poor Rate Acts), to hereditaments other than those mentioned in the said Act : Be it therefore enacted that,—

43 Eliz. c. 2.

From and after the commencement of this Act the Poor Rate Acts shall extend to the following hereditaments in like manner as if they were mentioned in the recited Act of the forty-third year of the reign of Queen Elizabeth ; that is to say,

(1) To land used for a plantation or a wood or for the growth of saleable underwood, and not subject to any right of common ;

(2) To rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land ; and

(3) To mines of every kind not mentioned in the recited Act.

4. The gross and rateable value of any land used for a plantation or a wood, or for the growth of saleable underwood, shall be estimated as follows : Valuation of land used as plantation, etc.

(a) If the land is used only for a plantation or a wood, the value shall be estimated as if the land instead of being a plantation or a wood were let and occupied in its natural and unimproved state :

(b) If the land is used for the growth of saleable underwood, the value shall be estimated as if the land were let for that purpose :

(c) If the land is used both for a plantation or a wood, and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine.

5. Where the rateable value of any land used for a plantation or a wood, or both for a plantation or wood and for the growth of saleable underwood, is increased by reason of the same being estimated in accordance with this Act, the occupier of that land under any lease or agreement made before the commencement of this Act, may, during the continuance of the lease or agreement, deduct from his rent any poor or other local rate, or any portion thereof, which is paid by him in respect of such increase of rateable value, and every assessment committee, on the application of such occupier, shall certify in the valuation list or otherwise the fact and amount of such increase. Deduction of rate by tenant of plantation, etc.

6.—(1) Where any right of fowling or of shooting or of taking or killing game or rabbits, or of fishing (hereinafter referred to as a right of sporting) is severed from the occupation of the land and is not let, and the owner of such right receives rent for the land, the said right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated as if the said right were not severed ; and in such case if the rateable value is increased by reason of its being so estimated, but not otherwise, the occupier of the land may (unless he has specifically contracted to pay such rate in the event of an increase) deduct from his rent such portion of any poor or other local rate, as is paid by him in respect of such increase : and every assessment committee, on the application of the occupier, shall certify in the valuation list or otherwise the fact and amount of such increase. Valuation and rating of rights of shooting, etc.

(2) Where any right of sporting, when severed from the occupation of the land is let, either the owner or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof.

(3) Subject to the foregoing provisions of this section the owner of any right of sporting, when severed from the occupation of the land, may be rated as the occupier thereof.

(4) For the purposes of this section, the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent for the same, shall be deemed to be the owner of the right.

Gross and rateable value of tin, lead, and copper mines.

7. Where a tin, lead, or copper mine is occupied under a lease or leases granted without fine on a reservation wholly or partly of dues or rent, the gross value of the mine shall be taken to be the annual amount of the whole of the dues payable in respect thereof during the year ending on the thirty-first day of December preceding the date at which the valuation list is made, in addition to the annual amount of any fixed rent reserved for the same which may not be paid or satisfied by such dues.

The rateable annual value of such mine shall be the same as the gross value thereof, except that where the person receiving the dues or rent is liable for repairs, insurance, or other expenses necessary to maintain the mine in a state to command the annual amount of dues or rent, the average annual cost of the repairs, insurance, and other expenses for which he is so liable, shall be deducted from the gross value for the purpose of calculating the rateable value.

In the following cases, namely,—

1. Where any such mine is occupied under a lease granted wholly or partly on a fine ; and
2. Where any such mine is occupied and worked by the owner ; and
3. In the case of any other such mine which is not excepted from the provisions of this Act and to which the foregoing provisions of this section do not apply ;

the gross and rateable annual value of the mine shall be taken to be the annual amount of the dues or dues and rent at which the mine might be reasonably expected to let without fine on a lease of the ordinary duration, according to the usage of the country, if the tenant undertook to pay all tenants rates and taxes and tithe rentcharge, and also the repairs, insurance, and other expenses necessary to maintain the mine in a state to command such annual amount of dues or dues and rent.

The purser, secretary, and chief managing agent for the time being of any tin, lead, or copper mine, or any of them, may, if the overseers or other rating authority think fit, be rated as the occupier thereof.

In this section—

The term “ mine,” when a mine is occupied under a lease, includes the underground workings, and the engines, machinery, workshops, tramways, and other plant, buildings (not being dwelling-houses), and works and surface of land occupied in connexion with and for the purposes of the mine, and situate within the boundaries of the land comprised in the lease or leases under which the due or dues and rent are payable or reserved :

The term “ dues ” means dues, royalty, or toll, either in money or partly in money and partly in kind ; and the amount of dues which are reserved in kind means the value of such dues :

The term “ lease ” means lease or sett, or license to work, or agreement for a lease or sett, or license to work :

The term “ fine ” means fine, premium, or foregift, or other payment or consideration in the nature thereof.

Deduction of rate by tenant of mine

8. Where any poor or other local rate which at the commencement of this Act any lessee, licensee, or grantee of a mine is exempt from being rated to in respect of such mine, becomes payable by him in respect of such mine during the continuance of his lease, grant, or license, or before the arrival of the period at which the amount of the rent, royalty, or dues is liable to

revision or re-adjustment, he may (unless he has specifically contracted to pay such rate in the event of the abolition of the said exemption) deduct from any rent, royalty, or dues payable by him one half of any such rate paid by him :

Provided that he shall not deduct any sum exceeding what one half of the rate in the pound of such poor or other local rate would amount to if calculated upon the rent, royalty, or dues so payable by him.

9. Where any occupier, lessee, licensee, grantee or other person is authorised by this Act to deduct any rate or sum in respect of a rate from any rent, royalty, or dues payable by him, then— General provision as to deduction of rates.

(1) Any payment so authorized to be deducted shall be a good discharge for such amount of rent, royalty, or dues as is equal to the amount of such payment, and shall be allowed accordingly.

(2) Any payment so authorized to be deducted may be recovered as an ordinary debt from the person to whom the rent, royalty, or dues may be payable.

(3) The person receiving the rent, royalty, or dues shall have the same right of appeal and objection with reference to the rate and to the valuation of the hereditament in respect of which the rate is payable as he would have if he were the occupier of such hereditament.

10. The hereditaments to which the Poor Rate Acts are extended by this Act, and which are thus made rateable to the relief of the poor, shall be rateable to all local rates in like manner as if the Poor Rate Acts had always extended to such hereditaments. Liability of property to local rates as well as poor rates.

11. This Act . . . shall come into operation on the sixth day of April one thousand eight hundred and seventy-five ; and the expression “commencement of this Act” shall in this Act be construed accordingly. Commencement of Act.

12. The provisions of the Sanitary Acts, as defined by the Public Health Act, 1872, with respect to any special assessment of wood lands for the purpose of any rate under those Acts shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable under-wood, or for both such purposes, and made rateable by this Act to the poor rate. As to provisions of Sanitary Acts as defined by 35 & 36 Vict. c. 79.

13. Nothing in this Act shall apply to a mine of which the royalty or dues are for the time being wholly reserved in kind, or to the owner or occupier thereof. Saving as to mine where dues payable in kind.

14. [*Repealed*, 46 & 47 Vict. c. 39. (S. L. R.)]

15. In this Act, unless the context otherwise requires,—

The term “gross value” has the same meaning as gross estimated rental in the Union Assessment Committee Act, 1862 :

The term “local rate” means any county rate, borough rate, highway rate, and other local rate leviable upon property rateable to the relief of the poor :

The term “valuation list” means, as regards any parish or place for which there is no valuation list, the poor rate :

The term “assessment committee” means, in relation to any parish or place where there is no assessment committee, the persons having power to make and assess the poor rate in such parish or place.

Definitions of terms.
25 & 26 Vict. c. 103, s. 15.

THE METROPOLIS MANAGEMENT ACT, 1875.

(38 & 39 VICT. c. 33.)

An Act to amend the Metropolis Management Acts.

[29th June 1875.]

[*Preamble recites 18 & 19 Vict. c. 120, ss. 163, 164 ; 32 & 33 Vict. c. 67.*]

Metropolitan Board to make abatement on assessment of certain parts of metropolis. 18 & 19 Vict. c. 120.

Totals of value of property exempt to be inserted in valuation lists. 32 & 33 Vict. c. 67.

Totals to be printed. 32 & 33 Vict. c. 67.

Appeal in case of unfairness, etc. 32 & 33 Vict. c. 67.

1. The Metropolitan Board of Works, in every assessment made by them upon such parts of the metropolis as contain property wholly or partially exempt from sewers rate, and in the precepts issued for obtaining payment of the sums so assessed shall make an allowance or abatement equal to the reduction or, exemption which, under the one hundred and sixty-third and one hundred and sixty-fourth sections of the Metropolis Management Act, 1855, is required to be made in levying any rate for the purpose of meeting such precepts.

2. The overseers and assessment committees acting under the Valuation (Metropolis) Act, 1869, shall cause the totals of the gross and rateable value of the property so wholly or partially exempt from sewers rate, and the extent of such exemption, to be ascertained and inserted in every valuation list which shall be made by them.

3. The said lists shall be sent by the assessment committees before the first day of November in each year to the clerk of the managers of the Metropolitan Asylum District, who shall print and send the said totals and extent of exemptions, with the other totals of gross and rateable value required to be printed and sent by the seventeenth section of the said Valuation (Metropolis) Act, 1869.

4. Any unfairness or incorrectness in the said totals and extent of exemptions may be appealed against in the manner provided for appealing against totals of gross or rateable value under section thirty-two of the Valuation (Metropolis) Act, 1869.

THE JURISDICTION IN RATING ACT, 1877.

(40 & 41 VICT. c. 11.)

An Act to make provision with respect to Judicial proceedings in certain cases relating to Rating.

[17th May 1877.]

Judges may act in certain cases relating to rates.

1. No judge shall be incapable of acting in his judicial office in any proceeding, whether commenced before or after the passing of this Act, by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable, in common with the others, to contribute to or to be benefited by any rate which may be increased diminished or in any way affected by such proceeding.

2. [*Repealed*, 46 & 47 Vict. c. 39. (S. L. R.)]

3. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them ; (that is to say,)

“ Judge ” means—

As to England, any judge of her Majesty's High Court of Justice or her Majesty's Court of Appeal ; and

Interpretation.

As to Ireland, any judge of any of the Superior Courts of Law or Equity at Dublin ; and

As to Scotland, any judge of the High Court of Session ; and

As to the United Kingdom, any Lord of Appeal, or Peer of Parliament, when sitting and voting in the House of Lords, upon the hearing of any matter brought before that House by way of error, or appeal from any other court.

“Rate” means any rate tax duty or assessment, whether public general or local, and also any fund formed from the proceeds of any such rate tax duty or assessment, or applicable to the same, or like purposes to which any such rate tax duty or assessment might be applied.

THE UNION ASSESSMENT ACT, 1880.

(43 & 44 VICT. c. 7.)

An Act to extend the Union Assessment Committee Acts to single parishes under separate Boards of Guardians. [19th July 1880.]

[*Preamble recites 25 & 26 Vict. c. 103, s. 45 ; 25 & 26 Vict. c. 103 ; 4 & 5 Will. 4, c. 76.*]

1. This Act may be cited as the Union Assessment Act, 1880, and together with the Union Assessment Committee Act, 1862, and the Union Assessment Committee Amendment Act, 1864, may be cited as the Union Assessment Acts, 1862 to 1880. Short title.
25 & 26 Vict.
c. 103.
27 & 28 Vict.
c. 39.

2. Section forty-five of the Union Assessment Committee Act, 1862, shall apply to a parish which is not included in a union of parishes, and in which the relief of the poor is administered by a board of guardians elected under the Poor Law Amendment Act, 1834, or under any local Act, in like manner as near as may be as it applies to any union or incorporation for the relief of the poor formed under a local Act, and the Union Assessment Committee Act, 1862, and the Acts amending the same, shall be construed accordingly ; and in relation to any such single parish the expression “ common fund ” in the said Acts shall be construed to mean the money applicable for the relief of the poor. Application
of 25 &
26 Vict.
c. 103, s. 45
to single
parishes
under sepa-
rate boards
of guardians.
4 & 5 Will. 4,
c. 76.
25 & 26 Vict.
c. 103.

3. This Act shall not extend to the metropolis as defined by the Valuation (Metropolis) Act, 1869. Extent.
32 & 33 Vict.
c. 67.

THE POOR RATE ASSESSMENT AND COLLECTION ACT, 1869, AMENDMENT ACT, 1882.

(45 & 46 VICT. c. 20.)

An Act to amend the Poor Rate Assessment and Collection Act, 1869.

[3rd July 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall be called the Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882. Short title.

Interpretation.
32 & 33 Vict.
c. 41.

Payment of
rates by
outgoing
occupier to
be proportionate to
time of
occupation.

Publication
of rate where
no parish
church.

2. This Act, and the Poor Rate Assessment and Collection Act, 1869, as amended, shall be read as one Act.

3. The provisions of the sixteenth section of the Poor Rate Assessment and Collection Act, 1869, so far as regards the payment of rates by an outgoing occupier, shall extend and apply to any outgoing occupier assessed in the rate, and such outgoing occupier shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant.

4. In a parish in which there is no church or chapel of the parish, a poor rate, whether made before or after the passing of this Act, shall be deemed to have been duly published if, within fourteen days after the making of the rate, notice thereof has been given by affixing such notice in some public and conspicuous place or situation in the parish.

THE VALUATION (METROPOLIS) AMENDMENT ACT, 1884.

(47 & 48 VICT. c. 5.)

An Act to amend the Valuation (Metropolis) Act, 1869, by giving greater facilities for appeal to owners and lessees of houses paying rates and taxes in the place of the occupiers. [28th March 1884.]

32 & 33 Vict.
c. 67.

WHEREAS the Valuation (Metropolis) Act, 1869, does not sufficiently provide for objections to and appeals against valuation lists in the case of owners and lessees who by contract or arrangement pay tenants rates and taxes, more especially when such houses are subdivided into tenements separately rated as hereditaments in such valuation lists :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same (as follows) :

Short title
and construction.

1. This Act may be cited as the Valuation (Metropolis) Amendment Act, 1884, and shall be read and construed as one Act with the Valuation (Metropolis) Act, 1869 (herein-after called the principal Act).

Enabling
owners and
lessees to
appeal.

2. Section seventy of the principal Act is hereby repealed, and in lieu thereof it is enacted as follows : Where the owner or lessee of any hereditament is liable to be assessed for any rate or tax in the place of the occupier or tenant, or does in fact pay any such rate or tax in his place under any contract or arrangement with him, such owner or lessee shall for the purposes of this Act and the Acts incorporated therewith be deemed to be the occupier of such hereditament, and the person referred to as the ratepayer in sections nineteen and thirty-two of the principal Act, and the person who is to make to the overseers of his parish the statement or return referred to in the fifty-fifth section of the principal Act.

Provided, that any form of return, order, notice, or document required to be given to or served on the occupier under the principal Act shall, except where the owner or lessee is liable to be assessed to or to pay any rate or

tax in the place of the occupier, be deemed to be sufficiently given or served, notwithstanding this Act, if addressed to such occupier and left on the premises to which the return, order, notice, or document relates.

3. Where any occupier or ratepayer, or any owner or lessee deemed to be an occupier or ratepayer within the meaning of section two of this Act, shall object to the valuation list in respect of any hereditaments, whether consisting of a house or houses subdivided into tenements separately assessed as hereditaments or of separate houses or tenements not so subdivided, it shall be lawful for him to include in any one notice made in pursuance of section thirty-three of the principal Act or otherwise, or in any one objection, appeal, or other proceeding under the principal Act and the Acts incorporated therewith, the whole or any one or more of the hereditaments separately assessed and comprised in one valuation list of which he is or is deemed to be the occupier or ratepayer.

One notice or objection may include one or more separately assessed hereditaments.

THE LOCAL GOVERNMENT ACT, 1888.

(51 & 52 VICT. C. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith. [13th August 1888.]

* * * * *

APPLICATION OF ACT TO METROPOLIS.

40. In the application of this Act to the metropolis, the following provisions shall have effect :

Application of Act to metropolis as county of London.

- (1) The metropolis shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county of London.
- (2) Such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey, and Kent, shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London ; and it shall be lawful for her Majesty the Queen to appoint a sheriff of that county, and to grant a commission of the peace and court of quarter sessions to that county ; and, subject to the provisions of this Act, all enactments, laws, and usages with respect to counties in England and Wales, and to sheriffs, justices, and quarter sessions shall, so far as circumstances admit, apply to the county of London :
- (3) Provided that, for the purpose of the jurisdiction of the justices under such commission, and of such court, as well as other non-administrative purposes, the county of the city of London shall continue a separate county, but if and when the mayor, commonalty, and citizens of the city assent to jurisdiction being conferred therein on such justices and court may by commission under the Great Seal be made subject to the jurisdiction thereof.

* * * * *

Arrange-
ments for
paid chairman
and sitting
of quarter
sessions for
London.

42.—(1) If the London county council petitions her Majesty the Queen in that behalf, it shall be lawful for her Majesty from time to time to appoint a barrister of not less than ten years' standing to be paid chairman or deputy chairman, or one of the paid deputy chairmen, as the case may be, of the quarter sessions for the county of London.

* * * * *

(5) Where there is any such paid chairman or deputy chairman of the quarter sessions, the court may be held before such chairman or deputy chairman alone.

(6) Separate courts of quarter sessions may be held at different parts of the county of London at the same time if so directed by the county council with the approval of a Secretary of State, and every court of general sessions of the peace for the county of London and every adjournment thereof shall have the same jurisdiction in all respects, including the power of hearing and determining appeals, as if such court were quarter sessions.

(7) The London county council may from time to time submit to a Secretary of State a scheme for regulating the holding of courts of quarter sessions in London either at any one place or at different places, and in the latter case either at the same time or at different times, and for determining the legal character of each sessions so held, that is to say, whether quarter, general, original, or adjourned sessions, or otherwise, and for making such regulations respecting committals for trial, recognisances, depositions, and other matters as are necessary or proper for giving effect to the scheme, and such scheme, when approved by a Secretary of State, shall be published in the London Gazette, and thereupon shall have effect as if it were enacted in this Act.

* * * * *

32 & 33 Vict.
c. 67.

(10) The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area. Upon the hearing of any appeals in relation to property in the city of London, such two members of the court of quarter sessions of the city of London as may be appointed by that court for the purpose, shall be entitled to attend and sit as members of the quarter sessions for the county of London.

* * * * *

Transfer of
duties under
32 & 33 Vict.
c. 67 of clerk
of metro-
politan
asylum
managers.

44. On and after the appointed day all powers and duties of the clerk to the managers of the metropolitan asylums district under the Valuation (Metropolis) Act, 1869, shall be transferred to the clerk of the county council of London, and the said Act shall be construed as if the county council were substituted therein for the managers of the metropolitan asylums district.

* * * * *

ADVERTISING STATIONS (RATING) ACT, 1889.
(52 & 53 VICT. C. 27.)

An Act to amend the Law with respect to rating Places used for Advertisements.
[12 August 1889.]

WHEREAS difficulties have arisen in relation to the assessment to poor and other rates of land used for exhibition of advertisements and it is expedient to remove the same :

Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

1. This Act may be cited as the Advertising Stations (Rating) Act, 1889. Short title.
2. In this Act the term "owner" means the person for the time being Definitions, receiving or entitled to receive the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive or be entitled to receive the same if such lands or premises were let at a rackrent ; and the word " person " shall be deemed to include any body of persons whether corporate or unincorporate.
3. Where any land is used temporarily or permanently for the exhibition of advertisements, or for the erection of any hoarding frame post wall or structure used for the exhibition of advertisements but not otherwise occupied, the person who shall permit the same to be so used, or (if he cannot be ascertained) the owner thereof, shall be deemed to be in beneficial occupation of such land or part thereof, and shall be rateable in respect thereof to the relief of the poor and to all local rates, according to the value of such use as aforesaid. Rating land used for advertisements and not otherwise occupied
4. Where any land or hereditament occupied for other purposes, and rateable in respect thereof to the relief of the poor and local rates, is used temporarily or permanently for the exhibition of advertisements, or for the erection thereon or attachment thereto of any hoarding frame post wall or structure used for the exhibition of advertisements, the gross and rateable value of such land or hereditament shall be so estimated as to include the increased value from such use as aforesaid. Rating occupied hereditaments used for advertisements
5. Where, under any power vested in them by any local or general Act, any corporation board vestry urban sanitary or other authority shall grant a licence for the temporary erection of any hoard gantry scaffold or other structure upon or over any part of any public highway, or upon or over any lands or hereditaments the property of such corporation board vestry sanitary or other authority, such corporation board vestry sanitary or other authority may include in such licence a condition or conditions prohibiting the affixing of any advertisement to any such hoard gantry scaffold or other structure, or sanctioning the affixing of advertisements thereto upon payment of such sum and on such conditions as the corporation board vestry sanitary or other authority granting the licence may determine. And any person using any such hoard gantry scaffold or other structure otherwise than as permitted by such licence shall for every offence be liable to a penalty not exceeding five pounds, and a further sum not exceeding forty Use of hoarding in roads for advertisements.

shillings for every day during which such offence shall be continued after notice in writing to discontinue such use shall have been given to such person by such corporation board vestry sanitary or other authority, which penalties may be recovered in a summary way by such corporation board vestry sanitary or other authority.

The amount of any payments received or penalties recovered under this section shall be applied by the corporation board vestry sanitary or other authority receiving the same in aid of the rate levied for the repair of the highway.

6. [*Application of Act to Ireland.*]

Commence-
ment of Act

7. This Act shall come into operation on the twenty-ninth day of September one thousand eight hundred and eighty-nine.

THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

An Act to make further provision for Local Government in England and Wales.
[5th March 1894.]

* * * * *

POWERS AND DUTIES OF PARISH COUNCILS AND PARISH MEETINGS.

Parish
council to
appoint
overseers.

5.—(1) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer, for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians.

(2) As from the appointed day—

- (a) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and
- (b) references in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and
- (c) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

6.—(1) Upon the parish council of a rural parish coming into office, there shall be transferred to that council :—

- (a) The powers, duties, and liabilities of the vestry of the parish except—

Transfer of
certain
powers of
vestry and

- (i.) so far as relates to the affairs of the church or to ecclesiastical charities ; and
- (ii.) any power, duty, or liability transferred by this Act from the vestry to any other authority :
- (b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate. 18 & 19 Vict. c. 128.
- (c) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—
- (i.) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate.

19. In a rural parish not having a separate parish council, the following provisions shall, as from the appointed day, but subject to provisions made by a grouping order, if the parish is grouped with some other parish or parishes, have effect :

- (4) All powers, duties, and liabilities of the vestry shall, except so far as they relate to the affairs of the church or to ecclesiastical charities, or are transferred by this Act to any other authority, be transferred to the parish meeting ;
- (5) The power and the duty of appointing the overseers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting, and the power given by this Act to a parish council of appointing trustees of a charity in the place of overseers or churchwardens, shall vest in the parish meeting ;
- (10) On the application of the parish meeting the county council may confer on that meeting any of the powers conferred on a parish council by this Act.

33.—(1) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

other authorities to parish council.

Provisions as to small parishes.

Power to apply certain provisions of Act to urban districts and London.

(6) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

Supplemental provisions as to control of overseers in urban districts.

32 & 33 Vict. c. 41.

34. Where an order of the Local Government Board under this Act confers on the council of an urban district, or some other representative body within the district, either the appointment of overseers and assistant overseers or the powers, duties, and liabilities of overseers, that order or any subsequent order of the Board may confer on such council or body the powers of the vestry under the third and fourth sections of the Poor Rate Assessment and Collection Act, 1869.

Supplemental provisions as to transfer of powers.

52.—(5) All enactments in any Act, whether general or local and personal, relating to any powers, duties, or liabilities transferred by this Act to a parish council or parish meeting from justices or the vestry or overseers or churchwardens and overseers shall, subject to the provisions of this Act and so far as circumstances admit, be construed as if any reference therein to justices or to the vestry, or to the overseers, or to the churchwardens and overseers, referred to the parish council or parish meeting as the case requires, and the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

SUPREME COURT OF JUDICATURE (PROCEDURE) ACT, 1894.

(57 & 58 VICT. c. 16.)

An Act to amend the Supreme Court of Judicature Acts. [3rd July 1894.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

APPEALS.

1.—(5) In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court ; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that court or by the Court of Appeal.

(6) An application for leave to appeal may be made *ex parte* or otherwise, as may be prescribed by rules of court.

Appeals from quarter sessions.

2.—(1) Every case stated by a court of quarter sessions otherwise than under the Acts eleven and twelve Victoria, chapter seventy-eight, and twelve and thirteen Victoria, chapter forty-five, for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly.

(2) On the hearing of any appeal from a court of quarter sessions the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate court, for re-hearing and determination by the court of quarter sessions, or may remit the case for re-statement.

(3) On the hearing of any such appeal the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne.

(4) The judgment on any such appeal, or, where an appeal to a court of quarter sessions has been directed to be entered for re-hearing, then that appeal shall, on motion by any party to the appeal, be entered at the sessions next or next but one after the delivery of the judgment, or the giving of the direction, and shall, unless the appellate court otherwise directs, have effect as if the judgment had been given, or, in case of an appeal directed to be re-heard, the appeal had been heard and determined, by the court of quarter sessions at the time of the decision in respect of which the appeal from quarter sessions was brought, and entry and respite of any appeal to quarter sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary.

* * * * *

SHORT TITLE.

7. This Act may be cited as the Supreme Court of Judicature (Procedure) Act, 1894, and shall be read with the Judicature Acts, 1873 to 1891, and shall come into operation at the expiration of two months after the passing thereof. Short title and commencement.

AGRICULTURAL RATES ACT, 1896.

(59 & 60 VICT. c. 16.)

An Act to amend the Law with respect to the Rating of Occupiers of Agricultural Land in England, and for other purposes connected therewith.

[20th July 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1.—(1) During the continuance of this Act, *that is to say, the period of five years after the thirty-first day of March next after the passing of this Act (d)*, the occupier of agricultural land in England shall be liable, in the case of every rate to which this Act applies, to pay one half only of the rate in the pound payable in respect of buildings and other hereditaments. Exemption of agricultural land from half of rates to which this Act applies.

(2) This Act shall apply to every rate as defined by this Act, except a rate—

(a) which the occupier of agricultural land is liable, as compared with the occupier of buildings or other hereditaments, to be assessed to or to pay in the proportion of one half or less than one half, or

(d) The words in *italics* are repealed by the Agricultural Rates Act, 1896, etc., Continuance Act, 1901 (1 Edw. 7, c. 13); *infra*, p. 814, which extends this Act to March 31st, 1906.

- (b) which is assessed under any commission of sewers or in respect of any drainage, wall, embankment, or other work for the benefit of the land.

Payment out of Local Taxation Account in respect of deficiency arising from exemption.

2.—(1) In respect of the deficiency which will arise from the provisions of this Act in the produce of rates made by the spending authorities in England, as herein-after defined, there shall during the continuance of this Act—

- (a) be paid to the Local Taxation Account an annual sum (in this Act referred to as the annual grant) of such amount as is certified under the provisions herein-after contained ; and
- (b) be issued from the Local Taxation Account by half-yearly payments out of the annual grant to each such spending authority a share of that grant of such amount as is certified under the provisions herein-after contained.

(2) The Commissioners of Inland Revenue, in such manner, by such payments, and under such regulations, as the Treasury direct, shall pay to the Local Taxation Account, out of the proceeds of the estate duty derived in England from personal property, the annual sum required by this section to be paid to that account.

(3) The first of those payments shall be made during the six months ending on the thirty-first day of March next after the passing of this Act, so as to make up a half-yearly payment to meet the issues to spending authorities on account of the six ensuing months.

Contributions from more than one parish.

3.—(1) Where any spending authority require in any half year or other period to raise from two or more parishes a sum by a rate to which this Act applies, they shall, in determining the net amount to be so raised, deduct the sum issuable to them in respect of the said rate on account of their share of the annual grant for the said half year or other period, and the net amount after that deduction shall, where it would otherwise be raised in proportion to the rateable value, be raised in proportion to the assessable value of those parishes.

(2) For the purposes of this section the assessable value of a parish shall be the rateable value thereof reduced by an amount equal to one half of the rateable value of the agricultural land in the parish.

Certifying of annual sums payable in respect of deficiency.

4.—(1) The Local Government Board shall, as soon as may be after the passing of this Act, certify the amount—

- (a) of the annual grant to be paid to the Local Taxation Account ; and
- (b) of the share of such grant to be paid annually to each spending authority,

under this Act, and for that purpose shall determine in the prescribed manner the amount which for the purposes of this Act is to be taken as having been raised during the last year before the passing of this Act by any rate to which this Act applies for the expenditure of each spending authority.

(2) Such proportion of the whole amount so taken to be raised in respect of any hereditaments or parishes as the Local Government Board estimate to be the proportion of the total rateable value of those hereditaments or parishes which represents the value of agricultural land, shall be taken for the purposes of this Act as the amount raised during the said year, by the said authority, by the said rate, in respect of agricultural land, and one half of that amount shall be taken as the deficiency which will arise from the provisions of this Act in the produce of the said rate.

(3) A sum equal to the total amount of the deficiencies thus estimated for all the spending authorities in England shall be the amount of the annual grant, and a sum equal to the deficiency thus estimated in the case of each spending authority shall be the share of that spending authority in the annual grant, and the Local Government Board shall certify the same accordingly.

(4) The Local Government Board, in acting under this section, shall obtain such information and make such inquiries, and in such manner as they think fit.

(5) The Local Government Board may in case of error amend, or for the purpose of meeting any alteration in an area or authority to which a certificate relates may vary, a certificate under this section, and any such amendment or variation shall have effect from the date of the original certificate, or any later date fixed by the Board; but, save as aforesaid, a certificate shall be final and binding on all persons.

(6) The Local Government Board may give provisional certificates, if they think necessary for the purpose of enabling the first payments to and out of the Local Taxation Account under this Act to be made, before they have sufficient information to enable them to give final certificates.

5. In every valuation list and in the basis or standard for any county rate, and in any valuation made by the council of a borough or any other council for the purpose of raising the borough or other rate—

(a) where separate hereditaments are specified therein, the value of agricultural land shall be stated separately from that of any building or other hereditament; and

(b) in every case the total rateable value of the agricultural land in each parish shall be stated separately from the total rateable value of the buildings or other hereditaments in such parish; and whenever a copy of the total of the rateable value of any parish is required to be sent to any person, such copy shall state both the above-mentioned totals; and

(c) where any hereditament consists partly of agricultural land and partly of buildings, the gross estimated rental of the buildings, when valued separately, in pursuance of this Act, from the agricultural land shall, while the buildings are used only for the cultivation of the said land, be calculated not on structural cost, but on the rent at which they would be expected to let to a tenant from year to year, if they could only be so used; and the total gross estimated rental of the hereditament shall not be increased by the said separate valuation.

6.—(1) For the purposes of this Act returns shall be made to the Local Government Board in accordance with the prescribed regulations—

(a) by every spending authority in relation to the sums actually received by them or their predecessors during the year next before the passing of this Act from any rate to which this Act applies; and

(b) by every assessment committee or council whose duty it is to revise or make a valuation list, basis, standard or other valuation for any parish, in relation to the gross estimated rental and rateable value of that parish, and the proportion thereof which represents agricultural land; and

(c) by any such authority, committee, or council in relation to any other prescribed information.

(2) For the purpose of the returns, statements showing the gross estimated rental and rateable value of the agricultural land in a parish, and, in the case of any hereditament separately valued which consists in part of agricultural land and in part of buildings or other hereditaments, of each such part, shall be made by the overseers of every parish, and corrected by the assessment committee, and sent to the surveyor of taxes, and be subject to objection or appeal by the said surveyor and overseers before the assessment committee, and the justices in special sessions, and the court of quarter sessions, and subject to the right of any aggrieved ratepayer to be heard upon the said appeal, in such form, within such times, and generally in such manner, and subject to such provisions, as may be prescribed. These provisions shall conform as nearly as circumstances will permit to the existing statutory law respecting valuation lists, as regards notices, rights to inspect and take extracts, the hearing of objections, and otherwise.

(3) The Local Government Board may by order make regulations (e) for the purpose of this section, and also generally for carrying into effect this Act, and those regulations shall be laid before both Houses of Parliament, and if neither House of Parliament within ten days passes a resolution adverse to the said order, they shall be binding in law until varied in the same manner, shall have effect as if they were enacted in this Act, and shall amongst other matters provide—

- (a) for fixing, with the concurrence of the Treasury, for the purpose of the division in the statements of agricultural land from buildings or other hereditaments, the minimum gross estimated rental and rateable value of the buildings or other hereditaments ;
- (b) for giving effect to a notice of objection or appeal by the surveyor of taxes unless it is proved that such notice is unfair or incorrect ;
- (c) for the temporary adoption by the county council or any other council, of the division in the return between the total rateable value of agricultural land and that of buildings and other hereditaments ;
- (d) for the alteration of the valuation list in accordance with the statements as finally settled and sending copies of the returns to spending authorities and for applying and adopting any statutory form or procedure respecting the valuation list or poor rate ; and
- (e) for adapting this Act to cases where there is no valuation list, or where a sum is raised by rate from an area not a parish.

(4) The regulations may also provide fines for the breach thereof not exceeding forty shillings, or in case of any continuing offence not exceeding forty shillings a day during the continuance of the offence, and any such fine may be recovered as a Crown debt or to an amount not exceeding one hundred pounds before a court of summary jurisdiction.

7.—(1) Where the spending authority are a school board for a school district which is a parish, or the surveyors of highways, the amount which otherwise would be payable under this Act to the spending authority may be paid to the guardians of the poor law union in which the parish is situate, and, if so paid, shall be paid or credited by them to the spending authority.

(2) Every sum paid under this Act out of the Local Taxation Account to any spending authority in respect of any rate, shall, for the purpose of its

(e) The regulations made under this section (so far as they are of permanent application) are set out *infra*, p. 815.

As to
spending
authorities.

application, of account, and of audit, be deemed to have been raised by the said rate.

(3) For the purposes of section ninety-seven of the Elementary Education Act, 1870, any amount paid or credited under this Act out of the local taxation account to a school board shall be deemed to have been actually paid by the rating authority, and the amount which would have been raised or been produced by a rate of threepence in the pound on the rateable value shall be calculated in like manner as if this Act had not passed. 33 & 34 Vict. c. 75.

8. A limit imposed by any enactment on a rate shall be construed as being only a limit on the amount to be raised by that rate, and where by that limit or otherwise the sum to be raised or expended by a local authority is limited by any enactment by reference to a rate, the limit shall be varied so as to enable the local authority to raise or expend the same sum as they might have done if this Act had not passed, and in the case of a spending authority receiving any sum paid under this Act out of the local taxation account in respect of such rate that sum shall be deemed to be part of the sum raised thereby. As to limit of rate or expenditure in case of any local authority.

9. In this Act, unless the context otherwise requires—

Definitions.

The expression “rate” means a rate made during the continuance of this Act, the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined :

The expression “rateable value” in the case of the county rate, or any other rate, levied according to any annual value not being rateable value as stated in the valuation list, means that annual value :

The expression “valuation list” means a valuation list under the Union Assessment Committee Acts, 1862 and 1864, or, in the metropolis, under the Valuation (Metropolis) Act, 1869 : 25 & 26 Vict. c. 103 ;
27 & 28 Vict. c. 39 ;

The expression “spending authority” means any of the local authorities in England mentioned in the schedule to this Act : 32 & 33 Vict. c. 67.

The expression “occupier” includes owner where the owner is rated in place of the occupier :

The expression “Local Taxation Account” has the same meaning as in the Local Government Act, 1888 : 51 & 52 Vict. c. 41.

The expression “prescribed” means prescribed by order of the Local Government Board :

The expression “agricultural land” means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure-grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse :

The expression “cottage” means a house occupied as a dwelling by a person of the labouring classes :

The expression “year” means the local financial year, that is to say, the twelve months beginning on the first day of April, or where the

spending authority do not make up their accounts to that day on the nearest day thereto to which they do make up their accounts, or on any other prescribed day.

Short title. 10. This Act may be cited as the Agricultural Rates Act, 1896.

SCHEDULE.

SPENDING AUTHORITIES.

County councils, councils of county boroughs, councils of boroughs and other urban districts and of rural districts, boards of guardians, the receiver of the metropolitan police district, school boards, highway boards, surveyors of highways.

THE LONDON GOVERNMENT ACT, 1899.

(62 & 63 VICT. c. 14.)

An Act to make better provision for Local Government in London.

[13th July 1899.]

ESTABLISHMENT OF METROPOLITAN BOROUGHS.

Establishment of metropolitan boroughs in London.

1. The whole of the administrative county of London, exclusive of the City of London, shall be divided into metropolitan boroughs (in this Act referred to as boroughs), and for that purpose it shall be lawful for her Majesty by Order in Council, subject to and in accordance with this Act, to form each of the areas mentioned in the First Schedule to this Act into a separate borough, subject, nevertheless, to such alteration of area as may be required to give effect to the provisions of this Act, and subject also to such adjustment of boundaries as may appear to her Majesty in Council expedient for simplification or convenience of administration, and to establish and incorporate a council for each of the boroughs so formed.

* * * * *

POWERS OF BOROUGH COUNCILS.

Transfer to borough councils of powers from vestries and district boards.

4.—(1) On the appointed day every elective vestry and district board in the county of London shall cease to exist, and, subject to the provisions of this Act and of any scheme made thereunder, their powers and duties, including those under any local Act, shall, as from the appointed day, be transferred to the council for the borough comprising the area within which those powers are exercised, and their property and liabilities shall be transferred to that council, and that council shall be their successors, and the clerk of the council shall be called the town clerk, and shall be the town clerk within the meaning of the Acts relating to the registration of electors.

Provided that in the case of borrowing powers so transferred, if the London County Council refuse their sanction, or do not within six months after application made give their sanction, to a loan, or attach conditions to their sanction, an appeal shall lie to the Local Government Board, whose decision shall be final.

* * * * *

(3) The powers of a borough council shall, save as in this Act mentioned, extend to the whole of their borough.

Provided that any power or duty of the council under any Act, whether general or local, conferring powers in relation to some particular parish or district, or part of a parish or district, shall be exercised and performed by the council either throughout the borough or in a limited part thereof, or shall cease to be exercised and performed, as may be provided by a scheme under this Act, having regard to the object of the Act under which the power or duty arises, and to the nature of any change of area or alteration of boundary made by or under this Act.

RATES, OVERSEERS, AND AUDIT.

10.—(1) A scheme under this Act shall provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but shall make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments. rates.

(2) After the appointed day the general rate and the poor rate shall be assessed, made, and levied together by the borough council as one rate, which shall be termed the general rate, and shall be assessed, made, collected, and levied, as if it were the poor rate, and all enactments applying or referring to the poor rate shall, subject to the provisions of this Act as to audit, be construed as applying or referring also to the general rate.

(3) Where a borough comprises more than one parish, the amount to be raised to meet the expenses of the borough council, or other sums payable as part of those expenses, shall, subject to any provision required for the adjustment of local burdens, be divided between the parishes in proportion to their rateable value.

(4) Where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, any rate required to meet the expenses incurred under the Act shall, subject to the provisions of any scheme under this Act, be levied together with, and as an additional item of, the general rate over the area to which the Act extends.

11.—(1) After the appointed day the council of each borough shall be the overseers of every parish within their borough, and shall appoint such officers as may be required to assist in the transaction of the business, and shall defray the expenses of and incidental to the performance of the duties, of overseers. Provisions as to overseers and collection of rates. Provided that the town clerk of each borough shall have the powers and duties and be subject to the liabilities of overseers with respect to the preparation of lists of voters and of jury lists in the borough, and any document required to be signed by overseers may be signed by the town clerk.

(2) After the appointed day every precept issued by any authority in London for the purpose of obtaining money which is ultimately to be raised out of a rate within a borough, other than a precept sent to guardians by the Local Government Board or by a body containing representatives elected by the guardians, shall be sent to the council at their office, addressed to the council or to the town clerk. Any such precept, if so sent and

addressed, shall be deemed to be personally served on the council, and shall be executed by them. "Precept" in this section includes any order, certificate, warrant, or other document of a like character, and the Local Government Board may settle the form of any precept as so defined.

(3) After the appointed day all the rates collected in a metropolitan borough from any person by the council shall, as far as is practicable, be levied on one demand note, and the demand note shall be in a form approved by the Local Government Board, and shall state in manner provided in that form—

- (a) the rateable value of the premises in respect of which the rate is levied ; and
- (b) the rate in the pound ; and
- (c) the period for which the rate is made ; and
- (d) the several purposes for which the rate is levied ; and
- (e) the approximate amount in the pound required for each purpose (including, as far as is practicable, the proportionate amount of the estimated costs of and loss in collection) ; and
- (f) any matter required by section two of the London (Equalisation of Rates) Act, 1894, or any other enactment, to be stated in the demand note.

57 & 58 Vict.
c. 53.

Incidence of
sewers rate
or its
equivalent.

12. As between landlord and tenant every tenant who, if this Act had not been passed, would have been entitled to deduct against or to be repaid by his landlord any sum paid by the tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord such portion of the general rate as represents the sewers rate.

Assessment
committees.
32 & 33 Vict.
c. 67.

13. Where the whole of a poor law union is within one borough, the assessment committee shall, notwithstanding anything in section five of the Valuation (Metropolis) Act, 1869, be appointed by the borough council instead of by the board of guardians, and, where the borough comprises the whole of two or more unions, the council shall appoint only one assessment committee for those unions, and where the council appoint the assessment committee the town clerk shall act as the clerk to that committee.

* * * * *

ORDERS AND SCHEMES.

Appointment
of commis-
sioners and
preparation
of Orders and
schemes.

15.—(1) It shall be lawful for her Majesty in Council to refer to a Committee of the Privy Council the appointment of Commissioners to prepare such Orders and schemes as are required for carrying this Act into effect, and the Committee may settle the Orders and schemes so prepared, and may employ such persons as they may deem necessary for the purposes of this Act.

(2) Before any Order in Council forming an area into a borough is made under this Act, the draft thereof shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and if either of those Houses before the expiration of those thirty days presents an address to her Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft Order.

(3) The Commissioners shall for the execution of their duties under this Act have the like powers as inspectors of the Local Government Board.

(4) Any expenses incurred by the Committee under this Act shall, to the amount certified by the Treasury, be paid by the London County Council out of the county fund.

16.—(1) A scheme under this Act may make provision—

Provisions to
be made by

- (a) for any matters which under this Act are to be regulated by scheme ;
and scheme.
- (b) for any of the purposes, except police, for which a scheme may be
made under Part Eleven of the Municipal Corporations Act, 1882, 45 & 46 Vict.
so far as those purposes are consistent with this Act ; and c. 50.
- (c) for anything which may be done with respect to a parish by an order
under section fifty-seven of the Local Government Act, 1888, or 51 & 52 Vict.
may be done under section thirty-three of the Local Government c. 41.
Act, 1894, so, however, that parishes in different unions shall not 56 & 57 Vict.
be united except with the approval of the Local Government c. 73.
Board ; and
- (d) for such adjustments as may be required for carrying into effect any
of the provisions of this Act or for preventing any injustice with
respect to the incidence of any rate or the discharge of any liability
or otherwise, and in particular for such adjustments as may be
required for the efficient maintenance of any libraries, baths, or
washhouses, which have been maintained under the provisions
of any of the adoptive Acts ; and
- (e) for preserving, so far as may appear necessary or expedient, any right,
power, exemption, or immunity heretofore exercised or enjoyed in
respect of property belonging to or occupied by the Crown or any
Government department ; and
- (f) for making such alterations in the boundaries of the electoral
divisions for the purpose of school board elections as may be
rendered necessary by any alteration in the area of the county
of London ; and
- (g) for repealing or modifying any local Act other than the London 57 & 58 Vict.
Building Act, 1894 ; and c. cxxiii.
- (h) for carrying into effect this Act or any Order in Council made
thereunder ;

and may contain any incidental, consequential, or supplemental provisions,
which may appear to be necessary or proper for the purposes of the scheme.

(2) In making adjustments by a scheme under this section, regard shall be
had to any composition, contribution, or exemption, whether statutory or
otherwise, which has heretofore existed in regard to any portion of any area
dealt with under the scheme.

(3) The provisions of the Municipal Corporations Act, 1882, as amended 45 & 46 Vict.
by the School Boards Act, 1885, with respect to a scheme under Part Eleven c. 50.
of the first-mentioned Act, shall apply in the case of any scheme under this 48 & 49 Vict.
Act with the necessary modifications, and any governors or trustees of the c. 38.
poor or other similar body under a local Act shall be deemed, but the London
County Council shall not be deemed, to be a local authority within the meaning
of those provisions. There shall also be deemed to be local authorities
within the meaning of the said provisions :

- (a) the mayor, commonalty, and citizens, and the Court of Aldermen of
the City of London, so far as relates to any powers exercisable by
them or by officers appointed by them respectively within the
ancient borough of Southwark ; and

- (b) the Dean and Chapter of the Collegiate Church of St. Peter, Westminster, so far as relates to any powers of local government exercisable by them or their officers within the borough of Westminster, and the Court of Burgesses of the ancient city of Westminster.

(4) Provided that notification in the London Gazette, and in such other manner as the Committee of Council may direct, of a draft scheme having been prepared or of a scheme having been settled, and of the place where copies of it can be inspected and obtained, shall be substituted for publication of the draft scheme or scheme in the London Gazette or in the manner required by the Seventh Schedule to the Municipal Corporations Act, 1882.

45 & 46 Vict.
c. 50.

Rules as to
boroughs
and parishes.

17.—(1) Every part of the administrative county of London outside the City shall be situate in some borough and some parish, and a parish shall not be situate in more than one borough, or partly in a borough and partly in the City.

(2) An Order in Council under this Act may divide a parish or place into parts for the purpose of giving effect to this section or of constituting a satisfactory area for a borough, and, unless otherwise provided by the Order or by a scheme under this Act, each part shall be a separate parish.

Detached
parts of
parishes.

18.—(1) Every part of a parish in London which is wholly detached from the principal part of the parish shall by an Order in Council under this Act be annexed to or divided between any of the boroughs which it adjoins, and be either constituted a separate parish or be annexed to or divided between any of the parishes which it adjoins, so however that the provisions of this Act with respect to a parish not being situate in more than one borough shall be observed.

Provided that if the Commissioners under this Act make a special report to Parliament that by reason of anything done under any of the adoptive Acts, or for any other exceptional reason, it is impracticable to deal with a detached part of a parish in manner required by the foregoing provisions of this section, those provisions shall not apply.

And further provided that the foregoing provisions of this section shall not apply to the hamlet of Knightsbridge.

(2) Where the county of London surrounds a detached part of a parish in another county, the foregoing provisions shall apply, and the detached part shall for all purposes become part of the county of London and of the appropriate county electoral division.

(3) Where a detached part so becomes part of the county of London, and is part of any urban district the remainder of which adjoins the county of London, the whole of the district may, by Order in Council, if it seems expedient after considering all the circumstances of the case, be added to and form for all purposes part of the county of London and of the appropriate borough.

(4) Where a detached part of a parish in the county of London is wholly surrounded by any other county, the detached part shall for all purposes become part of that county, and where a detached part as aforesaid is surrounded by more than one county, that detached part shall become part of such county as shall be determined by Order in Council under this Act, and every such detached part shall, by Order in Council, be

either constituted a separate parish or annexed to or divided between any parish or parishes which it adjoins, and be added to the appropriate county district and county electoral division.

(5) Nothing in this section shall apply to the City of London.

(6) The London County Council and the council of any adjoining county shall be entitled to be heard on any alteration or proposed alteration of the area of the county of London.

19.—(1) A scheme under this Act shall provide for placing Woolwich under the general law applying to metropolitan boroughs, and for the repeal of the application thereto of the provisions of the Public Health Acts and other enactments not applying to London, and for the application thereto of the Metropolis Management Acts, 1855 to 1893, and other enactments applying to London. Application of Act to Woolwich.

(2) Subject to the provisions of any such scheme, this Act shall apply to Woolwich in like manner as if the local board of health thereof were an administrative vestry.

(3) Nothing in this Act shall prevent the council of any borough consisting of or comprising Woolwich from continuing to make any contribution for the purpose of technical education hitherto made by any local authority, or from exercising any existing powers of carrying on a market.

20.—(1) An Order in Council under this Act may either annex Penge to the borough of Lewisham or to the borough of Camberwell, or separate it from the county of London and make it form part of the county of Surrey or of the county of Kent, and if it is so separated shall provide for constituting it an urban district, or for adding it to an adjoining county borough or urban district, and if necessary shall determine the county electoral division to which it is to belong. Special provision as to Penge.

(2) A scheme under this Act shall make such provision as may be necessary for the apportionment and transfer of property and liabilities, and for the repeal of the application to Penge of the Metropolis Management Acts, 1855 to 1893, and any other enactments applying to London, and for the application thereto of the Public Health Acts and other enactments not applying to London.

21. An Order in Council under this Act may detach Kensington Palace from the borough of Westminster and attach it to the borough of Kensington. Provision as to Kensington Palace.

22. The places known as the Inner and Middle Temples shall for the purposes of this Act be deemed to be within the city of London. Provision as to the Temples.

* * * * *

29. If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to the council of any metropolitan borough, or any property is or is not vested in any such council, that question, without prejudice to any other mode of trying it, may, on the application of the council, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question. Proceedings in case of doubts as to transfer of powers.

* * * * *

Construction
of Act and
savings.

31.—(1) Where any Act passed before the passing of this Act contains expressions referring to a borough, those expressions shall not be construed as referring to a metropolitan borough created by this Act unless applied thereto by or under the provisions of this Act or of any subsequent enactment.

(2) Any enactment in any Act, whether general or local, referring to an authority whose powers or duties are transferred by or under this Act to a borough council shall be construed with the necessary modifications, including the substitution of the borough council for that authority and of the borough for the area of that authority.

Appointed
day and
transitory
provisions.

33.—(1) For the purposes of this Act the appointed day shall be the day on which the members of the borough councils first elected under this Act come into office, or such other day not being more than six months earlier or later, as the Lord President of the Council may appoint, either generally, or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different boroughs.

(2) Subject to the provisions of any scheme under this Act, and to such adaptations as may be made by Order in Council, sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply in the case of boroughs and borough councils under this Act.

56 & 57 Vict.
c. 73.

Definitions.

34. In this Act, unless the context otherwise requires,—

The expression “administrative vestry” means a vestry having the powers of a vestry elected for a parish specified in Schedule A. to the Metropolis Management Act, 1855; and the expression “elective vestry” means any vestry elected under the Metropolis Management Act, 1855:

The expression “rateable value” shall include the value of Government property upon which a contribution in lieu of rates is paid:

The expressions “powers,” “duties,” “property,” “liabilities,” and “powers, duties, and liabilities,” have respectively the same meanings as in the Local Government Act, 1888:

The expression “adoptive Acts” means the Baths and Washhouses Acts, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893:

The expression “local Act” includes a provisional order confirmed by an Act, and the Act confirming the order; and the expression “enactment” includes a provision of any such order.

18 & 19 Vict.
c. 120.

51 & 52 Vict.
c. 41.

FIRST SCHEDULE.

Section 1.

AREAS WHICH ARE TO BE BOROUGHES.

The parishes of—

Battersea.	Islington.
Bethnal Green.	Kensington.
Camberwell.	Lambeth.
Chelsea.	Paddington.
Fulham.	St. Marylebone.
Hackney.	St. Pancras.
Hammersmith.	Shoreditch.
Hampstead.	

The area consisting of the parishes of Mile End Old Town and St. George's-in-the-East and the districts of the Limehouse and Whitechapel Boards of Works including the Tower of London and the liberties thereof.

The district of the Poplar Board of Works.

The district of the Wandsworth Board of Works.

The area consisting of the parishes of St. George the Martyr, Christchurch, Southwark, St. Saviour, Southwark, and Newington.

The area consisting of the parishes of Rotherhithe, Bermondsey, Horselydown, and St. Olave and St. Thomas, Southwark.

The area of the parliamentary division of Holborn.

The area consisting of the parliamentary divisions of East and Central Finsbury.

The area of the parliamentary borough of Deptford.

The area of the parliamentary borough of Greenwich.

The area of the parliamentary borough of Lewisham.

The area of the parliamentary borough of Woolwich.

The area of the ancient parliamentary borough of Westminster, comprising the parishes of St. Margaret and St. John, Westminster, the parish of St. George, Hanover Square, the parish of St. James, Westminster, the parish of St. Martin-in-the-Fields and the district of the Strand Board of Works, and including the Close of the Collegiate Church of St. Peter, Westminster, and the Liberty of the Rolls.

The area consisting of the parish of Stoke Newington and of the urban district of South Hornsey, or so much thereof as may be incorporated with the county of London under this Act.

* * * * *

TITHE RENTCHARGE (RATES) ACT, 1899.

(62 & 63 VICT. c. 17.)

An Act to amend the Law with respect to the payment of Rates on Tithe Rentcharge attached to a Benefice. [1st August 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The owner of tithe rentcharge attached to a benefice shall be liable to pay only one-half of the amount of any rate to which this Act applies, which is assessed on him as owner of that tithe rentcharge, and the remaining one-half shall, on demand being made by the collector of the rate on the surveyor of taxes for the district, be paid by the Commissioners of Inland Revenue out of the sums payable by them to the Local Taxation Account, on account of the estate duty grant.

Exemption of owner of tithe rentcharge attached to a benefice from one-half of rates to which Act applies.

Interpreta-
tion.
57 & 58 Vict.
c. 30.

2.—(1) In this Act, unless the context otherwise requires,—

(a) The expression “estate duty grant” means the grant made under section nineteen of the Finance Act, 1894, in substitution for the probate duty grant :

(b) The expression “benefice” includes all rectories with cure of souls, vicarages, perpetual curacies, endowed public chapels and parochial chapelries, and chapelries or districts belonging or reputed to belong, or annexed, or reputed to be annexed, to any church or chapel, and districts formed for ecclesiastical purposes by virtue of statutory authority, and includes benefices in the patronage of the Crown or of the Duchy of Cornwall :

(c) The expressions “owner of tithe rentcharge” and “tithe rentcharge” have the same meanings respectively as in the Tithe Act, 1891.

54 Vict. c. 8.

(2) This Act shall apply in the case of any person liable to pay rates in respect of any payment in lieu of tithe as in the case of the owner of tithe rentcharge.

Short title.

3. This Act may be cited as the Tithe Rentcharge (Rates) Act, 1899.

Application
and duration.
59 & 60 Vict.
c. 16.

4. This Act shall apply to every rate as defined by section nine of the Agricultural Rates Act, 1896 (except any rate which the owner of tithe rentcharge is liable, as compared with the occupier of buildings, to be assessed to or to pay in the proportion of one half or less than one half), which is made after the fifteenth day of September one thousand eight hundred and ninety nine, and during the continuance of the said Agricultural Rates Act, 1896 (*f*).

AGRICULTURAL RATES ACT, 1896, ETC., CONTINUANCE ACT, 1901.

(1 EDW. 7, c. 13.)

An Act to continue the Agricultural Rates Act, 1896, the Tithe Rentcharge (Rates) Act, 1899, the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896, and the Local Taxation Account (Scotland) Act, 1898. [17th August 1901]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Continuance
of 59 &
60 Vict. c. 16.

1.—(1.) The period of the continuance of the Agricultural Rates Act, 1896, is hereby extended until the thirty-first day of March one thousand nine hundred and six, both for the purposes of that Act and for the purposes of the Tithe Rentcharge (Rates) Act, 1899.

62 & 63 Vict.
c. 17.

(2.) The words “that is to say, the period of five years after the thirty-first day of March next after the passing of this Act” in section one of the Agricultural Rates Act, 1896, are hereby repealed.

[2. *Application to Scotch Acts.*]

Short title.

3. This Act may be cited as the Agricultural Rates Act, 1896, etc. Continuance Act, 1901.

(*f*) Extended to March 31st, 1906, by 1 Edw. 7, c. 13.

II.—STATUTORY ORDERS.

AGRICULTURAL RATES ORDER, 1896.

(Dated July 28, 1896.)

AS TO ADAPTING THE STATUTORY FORM OF THE VALUATION LIST AND
OF THE POOR RATE.

Article XVI.—In every parish in which there is any agricultural land as defined by the Act, any new or supplemental valuation list made after the thirty-first day of March, one thousand eight hundred and ninety-seven, shall be made out in the form shown in Schedule W. hereto, instead of being made in the form shown in the schedule to the Union Assessment Committee Act, 1862, and every rate made after that date which is now required to be made in the form shown in the schedule to the Parochial Assessments Act, 1836, shall in every such parish be made in the form shown in Schedule Y. hereto.

APPLICATION OF REGULATIONS TO METROPOLIS.

Article XIII.—These regulations and the forms in the schedule thereto, in their application to parishes within the metropolis as defined by the Valuation (Metropolis) Act, 1869 (hereinafter in this Article called “the said Act”), shall have the following and any other necessary modifications :

- (3) The forms shown in Schedules G 2, L 2, N 2, W 2, and Y 2 shall be substituted for those shown in Schedules G., L., N., W., and Y., respectively, and in the forms shown in Schedules R. and Z. "rateable value" shall be substituted for "net annual value."

SCHEDULE W.

Form of Valuation List.

Valuation List for [the Parish or Place for which the List is made] in the
County of .

Name of Occupier.	Name of Owner.	Description of Property.	Name or Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value of Agricultural Land.	Rateable Value of Buildings and other Hereditaments not being Agricultural Land.
1.	2.	3.	4.	5.	6.	7.	8.
				A. R. P.	£ s. d.	£ s. d.	£ s. d.

Signed this day of .

A.B., } Overseers of the Poor of
C.D., } the Parish aforesaid.

SCHEDULE W 2.

Form of Valuation List, in Parishes in Metropolis in which there is any Agricultural Land as defined by the Agricultural Rates Act, 1896.
Valuation List for [the Parish or Place for which the List is made] in the Metropolitan Union of [or not being in Union], in the County of London.

Number.	Name of Occupier.	Name of Owner.	Description of Property.	No. of Class.	Name or Situation of Property.	Extent.	Gross Value as estimated by Overseers.	Gross Value as estimated by Surveyors of Taxes.	Rate of Deduction per Cent.	Gross Value as finally determined by Assessment Committee.	Rateable Value as finally determined by Assessment Committee.	Rateable Value of Agricultural Land.	Rateable Value of Buildings and other Hereditaments not being Agricultural Land.
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
							£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.

[To be signed and approved as required by the Valuation (Metropolis) Act, 1869.]

SCHEDULE X.
Exemplification of Valuation List.

Name of Occupier.	Name of Owner.	Description of Property.	Name or Situation of Property.	Estimated Extent.			Gross Estimated Rental.			Rateable Value of Agricultural Land.			Rateable Value of Buildings and other Hereditaments not being Agricultural Land.		
				A.	R.	P.	£	s.	d.	£	s.	d.	£	s.	d.
John Jones -	-	-	Whiteacre Farm	230	0	0	219	5	0	295	0	0	35	0	0
Ditto -	-	Buildings	Ditto	1	2	23	16	15	0	—	—	—	—	—	—
Ditto -	-	Agricultural land	Outfields Farm	70	0	0	110	0	0	130	0	0	18	15	0
Thomas Brown -	-	House	Blackacre Farm	—	—	—	25	0	0	—	—	—	39	5	0
Ditto -	-	Buildings	Ditto	0	2	0	50	15	0	—	—	—	—	—	—
Ditto -	-	Agricultural land	Ditto	429	0	0	369	5	0	345	0	0	—	—	—

The whole of Whiteacre Farm, both land and buildings, and the whole of Blackacre Farm, including house, buildings, and land, are each supposed to have been rated as one hereditament in the valuation list in force at the passing of the Act, the gross estimated rental and rateable value of the former being 266*l.* and 240*l.*, and of the latter 445*l.* and 103*l.*, respectively.

SCHEDULE Y.

Form of Rate to be substituted for the Form in the Schedule to the Parochial Assessment Act, 1836.

An Assessment for the Relief of the Poor of the Parish of _____, in the County of _____, and for other purposes chargeable thereon according to law, made this _____ day of _____, in the year of our Lord _____, after the rate of _____ in the £ on Buildings and other Hereditaments not being Agricultural Land, and at one half of the said Rate on Agricultural Land which is estimated to meet all the Expenses for the above purposes which will be incurred before the _____ day of _____ next.*

No.	Name of Occupier.	Name of Owner.	Description of Property.	Name or Situation of Property.	Estimated Extent.	Gross Estimated Rental.	Rateable Value of Buildings and other Hereditaments not being Agricultural Land.	Rate at £ s. d. in the £ on Agricultural Land and at £ s. d. in the £ on other Hereditaments.
1.	2.	3.	4.	5.	6. A. R. P.	7. £ s. d.	8. £ s. d.	9. £ s. d.

* If a rate is made payable by instalments the amount of each instalment and the date at which each instalment is payable are also to be set forth in the headings.

sessions to be paid by the appellant, and the amount of such recognizances shall be determined by such justice, having regard to the nature of the appeal, so that the amount be not less than 50*l*.

4. In lieu of entering into the recognizances prescribed by Order 3, the appellant may, within the same period, pay into the London and Westminster Bank (Head Office), to a joint account in the names of the chairman of the court and the clerk of the court, the sum of 50*l*., and the receipt given by the bank for such payment shall be deposited with the clerk of the court, and shall be filed by him in proof of such payment. Before making such payment, a *præcipe* shall be obtained from the clerk of the court.

5. Orders 1 to 4, both inclusive, shall not apply to assessment committees, overseers, or surveyors of taxes.

6. Appeals to quarter sessions shall be entered by lodging with the clerk of the court, on or before the 14th January, a copy of the notice of appeal.

7. In an appeal to quarter sessions, the person or persons claiming to appear as respondents, shall give notice in writing of his or their intention to appear, and shall state in the notice whether he, or they, intend to appear separately, or as joint respondents with any other person or persons; and such notice shall be delivered to the clerk of the court, and served on the appellant, within fourteen days after the time limited by Order No. 6 for the entry of the appeal, and the person or persons omitting to give such notice shall not be heard, unless by special leave of the court, until he or they shall have given such notice or complied with such terms as the court may think fit to direct or impose.

The expression "person or persons" in this Order shall extend and include a ratepayer, an occupier, a surveyor of taxes, an assessment committee, overseers, and any body of persons authorised by law to levy rates or require contributions payable out of rates.

8. On or before the 1st February next following the entry of an appeal to quarter sessions, the appellant shall state his case and the facts to be proved, and the points of law (if any) to be argued in support of the case, and shall deliver to the clerk of the court ten copies thereof for the use of the court, and shall serve one copy on each respondent; and, in like manner, each respondent shall, on or before the same day, state his case, and the facts to be proved, and the points of law (if any) to be argued in support of the case, and shall deliver, in like manner, ten copies thereof for the use of the court, and shall serve one copy on the appellant.

Provided that this Order shall not apply to an appeal in which the total rateable value appealed against does not exceed 300*l*.

9. The appellants' and respondents' cases shall be lithographed or printed on judicature paper, bookwise, or on white paper of the same size, and shall be indorsed longways; and the notice of appeal and all other documents supplied for the use of the court, or required to be delivered to the clerk of the court, shall be written, lithographed, or printed and endorsed as aforesaid.

10. Every document supplied for the use of quarter sessions, or filed with the clerk of the court, shall contain, at the top of the first page, and on the endorsement, the year and reference number of the appeal.

11. When the terms of an Order to be made in any appeal to quarter sessions have been agreed upon by the parties, particulars of such terms,

Deposit in lieu of recognizances at quarter sessions.

Recognizances not required of assessment committees, etc.

Mode of entering appeals at quarter sessions.

Respondents at quarter sessions to give notice of intention to appear.

Appellants and respondents at quarter sessions to state cases.

Paper and printing.

Papers to bear reference number.

Consent orders.

signed by the parties or their solicitors, shall be filed with the clerk of the court, and, at the next or some subsequent sitting of the court, an Order may be made in accordance with such terms, upon motion made by either party, with the consent of the other party.

Notices of motion.

12. Notices of motion to quarter sessions shall be served two clear days before the court is moved, unless by special leave of the court, and a copy of the notice shall be filed with the clerk of the court.

Audience by counsel.

13. Applications required to be made, and consents required to be given, at quarter sessions, shall be made and given by counsel in open court.

One counsel only to be heard.

14. One counsel only for each party to the appeal shall be heard at quarter sessions, unless by special leave of the court.

Counsel for appellant to begin

15. On appeals to quarter sessions, the counsel for the appellant shall begin, except when a surveyor of taxes is the appellant, in which case the counsel for the respondents shall begin. In cases in which there shall be more than one respondent claiming to appear separately, their counsel shall be heard in the order determined by the court at the time.

Order affecting gross value.

16. No order shall be made at quarter sessions affecting the gross value of a hereditament, until proof has been given, orally or by affidavit that notice of appeal has been served upon the surveyor of taxes.

Initialling valuation lists.

17. When an Order made by quarter sessions involves an alteration in the valuation list, the alteration shall not be initialled by the chairman until the Order has been completed and taken up.

Costs to be taxed.

18. The costs ordered by quarter sessions to be paid by any of the parties to the appeal, shall be taxed, in the usual manner, by the clerk of the court before the Order is settled.

Review of taxation.

19. If the party ordered to pay the costs of an appeal is dissatisfied with the taxation of costs by the clerk of the court, such party may carry in objections to the taxation, and the procedure thereupon shall be the same as in the high court, so far as is practicable.

Solicitors to attend on settling order of court.

20. The solicitors of the parties shall attend the clerk of the court, on settling any Order of the court, at a time to be fixed by him, and shall produce all necessary papers.

Extension of time.

21. The dates and times prescribed by these Orders (except where fixed by statute) may be extended or varied in appeals to quarter sessions by the court of quarter sessions, upon such terms and conditions as to costs or otherwise as the court may think fit.

Service of documents.

22. The provisions of s. 65 of the Act with respect to the service of Orders and notices under the Act shall apply to all documents required to be served under these Orders.

Interpretation.

23. Such of the expressions in these Orders as are the same as those used in the Act, shall respectively bear the interpretation given to them by the Act.

W. R. McCONNELL,

Chairman of Quarter Sessions.

18th April, 1898.

Approved. M. W. RIDLEY,

One of Her Majesty's Principal Secretaries of State.

WHITEHALL,

13th June, 1898.

FORM OF RECOGNIZANCE ON APPEAL TO QUARTER SESSIONS OR SPECIAL SESSIONS.

In the county of London.

Special Sessional Division.

WE, the undersigned, severally acknowledge ourselves to owe to our Sovereign Lady the Queen, the several sums following, namely of as principal, the sum of £ and of and of as sureties, the sum of £ each to be levied on our several goods, lands, and tenements, if the said principal fail in the condition hereunder written.

Signed {

Taken at in the county of London, the }
day of 19 before me }

Justice of the Peace for the County aforesaid.

CONDITION.

The condition of the above recognizance is such that, if the above-bounden principal shall duly prosecute an appeal to the court of quarter sessions for the county of London, under the Valuation (Metropolis) Act, 1869, and the Local Government Act, 1888, in respect of certain hereditaments described in the valuation list for the parish of in the county of London, as and shall duly pay the costs which may be ordered by the said court to be paid by him, then this recognizance shall be void, but otherwise shall remain in full force.

N.B.—*This form may be adapted to an appeal to special sessions.*

Notice of the recognizance must be given to the principal and to each surety.

DEPOSIT IN LIEU OF RECOGNIZANCE ON APPEAL TO SPECIAL SESSIONS.

In the county of London.

Special Sessional Division.

I of acknowledge that I have this day deposited with the clerk of the above-mentioned division, the sum of 20*l.* to be held by him as security in lieu of a recognizance to duly prosecute an appeal to the justices of the petty sessional division above-mentioned, under the Valuation (Metropolis) Act, 1869, in respect of certain hereditaments described in the valuation list of the parish of in the county of London as and I undertake duly to prosecute such appeal as aforesaid, and to pay the costs which may be ordered by the said justices to be paid by me. And I consent to the said clerk holding the above-mentioned sum, until the above conditions are performed. And I authorise him to apply and pay the said sum in such manner, to such persons, and in such amounts as the said justices shall direct.

Dated this day of , 19 .

Signed .

Witness the signature to the said .

APPEALS TO SPECIAL SESSIONS.

THE VALUATION (METROPOLIS) ACT, 1869.

Table of Fees to be paid to Clerks of Special Sessions.

	<i>s.</i>	<i>d.</i>
Drawing notice of special sessions or of any adjournment	5	0
Preparing and forwarding by post to each justice residing and acting within the division and to the overseers of each parish within the division, a duplicate of such notice, 2 <i>s.</i> 6 <i>d.</i> each, the total amount being divided proportionately among the parishes comprised in the division, and the proportion due from each parish to be paid by the overseers	—	—

	s.	d.
Recognizances by appellant and two sureties ...	6	0
Notices to sureties and appellant (each) ...	1	0
Upon making a deposit in lieu of recognizances ...	2	6
Entering appeal (including hearing and witnesses) ...	10	0
Drawing and recording order ...	5	0
If exceeding 5 folios, at per folio ...	1	0
Certified order for the parties ...	5	0
If exceeding 5 folios, at per folio ...	0	4
Minutes of order for perusal ...	2	6
If exceeding 5 folios, at per folio ...	0	4
Upon repayment of deposit ...	2	6
Taxation of costs ...	10	0
Each subpœna ...	5	0

W. R. McCONNELL,
Chairman of Quarter Sessions.
18th April, 1898.

Approved, M. W. RIDLEY,
*One of Her Majesty's Principal
Secretaries of State.*

WHITEHALL,
13th June, 1898.

APPEALS TO QUARTER SESSIONS.

THE VALUATION (METROPOLIS) ACT, 1869.

Table of fees to be paid to the Clerk of the Court.

	s.	d.
Entering appeal ...	5	0
Hearing fee ...	13	4
Upon making a deposit in lieu of recognizances ...	5	0
Drawing and recording every order of court ...	5	0
If exceeding 5 folios, at per folio ...	1	0
Certified order of court for the parties... ..	2	6
If exceeding 5 folios, at per folio ...	0	4
Minutes of order for perusal ...	2	6
If exceeding 5 folios, at per folio ...	0	4
Drawing special case, at per folio ...	1	0
Attending chairman settling case, for every hour's attendance ...	10	0
Copy of the case as settled, at per folio ...	0	4
Attending chairman for signature ...	10	0
Taxation of costs, 1s. for every 2 <i>l.</i> or fraction of 2 <i>l.</i> of the amount of the bill as taxed ...	—	—
Upon repayment of deposit ...	5	0
Each subpœna ...	5	0
Filing each document required to be filed ...	2	6
Printed list of appeals, each copy ...	1	0
Printed orders and tables of fees, each copy ...	1	0

W. R. McCONNELL,
Chairman of Quarter Sessions.
18th April, 1898.

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WHITEHALL,
13th June, 1898.

THE LONDON (RATING) SCHEME, 1901.

STATUTORY RULES AND ORDERS, 1901.

No. 208.

[*Preamble recites ss. 10, 15 and 16 of the London Government Act, 1899 (referred to in the scheme as "the Act"), the Agricultural Rates Act, 1896, and the Tithe Rentcharge (Rates) Act, 1899.*]

And whereas by an Order issued under section thirty-three of the Act, the Lord President of the Council ordered that, for the purpose of sub-sections (1) and (2) of section 10 of the Act, and of the repeal of such of the enactments specified in the Third Schedule of the Act as relate to rating, the appointed day shall be the first day of April, one thousand nine hundred and one.

And whereas the Commissioners appointed by the said Committee of the Privy Council have prepared a scheme containing the provisions hereinafter set forth.

Now, therefore, pursuant to the Act, and every other power enabling them in that behalf, the said Committee have settled a scheme containing the provisions herein, and do hereby direct, order, and declare as follows :

1.—(1) Subject to the provisions of this scheme, as from the first day of April, one thousand nine hundred and one, all money to be raised by rates to meet the expenses of the council of every metropolitan borough, including the sums of money required to be levied by any precept served on the borough council, shall be paid out of the general rate, and a separate sewers rate and a separate lighting rate shall not be levied. Provisions as to rates.

(2) The proceeds of any rate levied before the said date which are at that date in the hands or under the control of the council of a metropolitan borough, or which may be received by the council after that date, shall be carried to the same account as that to which the proceeds of the general rate levied after that date are to be carried.

2.—(1) In levying the general rate after the first day of April, one thousand nine hundred and one, effect shall be given to any exemption from any existing rate (whether that exemption is given by way of reduced assessment or by levying a differential rate in the pound or in any other manner) by means of the deduction from the total amount of the general rate which would otherwise be payable in respect of any hereditament to which the exemption applies of a proportionate part (corresponding to the exemption) of the amount produced by the rate in the pound which is treated as levied for the purposes in respect of which the exemption exists, or, in the case of a total exemption, equal to the whole amount so produced. Provisions as to exemptions.

Provided that an allowance, commission, or deduction under the Poor Rate Assessment and Collection Act, 1869, shall not be deemed to be an exemption within the meaning of this provision. 32 & 33 Vict. c. 41.

(2) Where in any metropolitan borough the owners or occupiers of any hereditaments or any class of hereditaments are entitled to any exemption, the council of that borough shall apportion the total rate in the pound amongst the various purposes for which the general rate is levied, so as to show approximately the rate in the pound required for any purpose or any

number of purposes in respect of which there is such an exemption, and shall enter the rates in the pound so apportioned in the heading of the rate, and the rates in the pound so apportioned and entered shall be treated as levied for the purposes in respect of which the exemption exists.

59 & 60 Vict.
c. 16.

(3) The relief given by the Agricultural Rates Act, 1896, shall be treated as an exemption to be given by way of deduction in accordance with this scheme, and as applying to the part of the general rate which is treated as levied for purposes for which any existing rates to which that Act applied were levied.

(4) Nothing in this scheme shall be construed as extending the duration of any exemption beyond the period during which it would have continued had the Act not been passed.

Additional
items.

3.—(1) Where, under the Act or otherwise, a rate is to be levied together with and as an additional item of, the general rate over the whole of any parish in a metropolitan borough the rate shall be included in the general rate for that parish.

(2) Where any sum to be raised by the council of a metropolitan borough is to be raised over an area not being the whole of a parish in the borough, the sum to be raised shall be raised by a rate levied together with, and as an additional item of, the general rate over that area.

(3) Where by the Act or this scheme or any other scheme under the Act a rate is to be levied together with, and as an additional item of, the general rate, effect shall be given to exemptions in the case of that rate in the same manner as in the case of the general rate.

(4) Where an additional item of the general rate is to be levied over part of a parish in any metropolitan borough, the council of that borough may, with the consent of the Local Government Board, keep a separate ratebook for the purposes of that additional item, but in any such case the net amount to be collected in respect of the item shall be shown in a column of the rate-book for the general rate.

Adaptation of
62 & 63 Vict.
c. 17.

4. The Tithe Rentcharge (Rate) Act, 1899, shall be treated as applying to so much of the general rate as is treated as levied for purposes for which the existing rates to which that Act applied were levied.

Form of
rate book,
etc.

5. The Local Government Board may from time to time by order make such adaptations as they may deem necessary in any statutory form or provisions respecting any rate, so as to give effect to the provisions of the Act and this scheme, and any such order shall have effect as if embodied in this scheme.

Definition of
existing rate.

6. For the purposes of this scheme the expression "existing rate" means any rate leviable in a metropolitan borough before the first day of April, one thousand nine hundred and one.

Short title,
effect and
construction.

7.—(1) This scheme may be cited as the London (Rating) Scheme, 1901 and shall have effect subject to the provisions of any future scheme and to the provisions of any scheme dealing with any particular exemption from rates or liability to be assessed.

(2) The Interpretation Act, 1889, applies for the purpose of the interpretation of this scheme as it applies to an Act of Parliament.

THE LONDON (ASSESSMENT COMMITTEES) SCHEME,
1902.

STATUTORY RULES AND ORDERS, 1902.

No. 210.

WHEREAS by various Orders in Council under the London Government Act, 1899 (in this scheme referred to as the Act), twenty-eight metropolitan boroughs have been established, and a council for each such borough has been established and incorporated.

[*Recital of ss. 10, 13, 15, and 16 of the London Government Act, 1899.*]

And whereas it is necessary, for the purpose of carrying the Act into effect, that such adaptations in the Valuation (Metropolis) Act, 1869, and the enactments incorporated with or amending that Act, should be made as hereinafter contained.

And whereas the Commissioners appointed by the said Committee of the Privy Council have prepared a scheme containing the provisions hereinafter set forth.

Now, therefore, pursuant to the Act, and every other power enabling them in that behalf, the said Committee have settled a scheme containing the provisions herein, and do hereby direct, order and declare as follows :

1.—(1) Subject to the provisions of this scheme, in cases where before the passing of the Act an assessment committee was appointed by a board of guardians and by virtue of the Act the committee is appointed by the council of a metropolitan borough, all the provisions of the Valuation (Metropolis) Act, 1869, and the enactments incorporated therewith or amending the same, shall be construed, so far as is consistent with the tenor thereof, as if references to the borough, council, members of the council, town clerk, and general rate, were substituted for references to the union, board of guardians, guardians, clerk and assistant clerk of the board of guardians, and common fund.

(2) The assessment committee so appointed by the council of a metropolitan borough shall be entitled to have, and shall have, in their possession and under their control any valuation lists, notices of objection, returns, and other documents which were in the possession or under the control of the assessment committee appointed by the board of guardians.

Provided that any officer authorised by the board of guardians in that behalf shall have the same right of inspecting and taking copies of, and extracts from, any of those documents without payment as a Surveyor of Taxes has under section sixty-nine of the Valuation (Metropolis) Act, 1869, and that section shall apply accordingly.

2. Where the council of a metropolitan borough, as successors either of a board of guardians or of a vestry, appoint an assessment committee which acts for part only of the borough, and an assessment committee appointed by a board of guardians acts for other parts of the borough, the expenses of the committee appointed by the borough council shall be defrayed by the council out of a rate levied together with, and as part of, the general rate of the parishes for which that committee acts.

3. This scheme may be cited as the London (Assessment Committees) Scheme, 1902, and the Interpretation Act, 1889, applies for the purpose of the interpretation of this scheme as it applies to an Act of Parliament.

Adaptation
of Valuation
Acts.

Expenses of
assessment
committee
appointed by
borough
council for
part of
borough.

Short title
and con-
struction.

APPENDIX III.

RECENT DECISIONS AS TO THE RATING OF MACHINERY.

	PAGE
<i>Kirby v. Hunslet Union</i> - - - - -	826
<i>Eastern Morning News Co. v. Hull Guardians</i> - - - - -	829

WHILE this book was passing through the press, and after the greater part of it was in type, two cases were decided at quarter sessions, which in the ordinary course would have been considered in Chapter XXV. As the cases appear to be of general importance, a short account of them is given here; but as an appeal to the High Court from the decision at Leeds (*Kirby v. Hunslet Union*) is pending, it has not been thought desirable to add anything by way of comment.

Kirby v. Hunslet Union.—In this case (*a*) the appeal related to premises used for the business of a general jobbing engineer. None of the machines in question (with one or two exceptions) were in any way fixed, or attached, to the freehold; and the appellant admitted that certain shafting and an engine (which were so fixed) were rateable. The respondents had made the valuation appealed against by adding to the value of the land and buildings five per cent. on the value of *all* the machinery, both fixed and unfixed. The main point of dispute was that the respondents contended that the rateable value was to be determined on the assumption that the hypothetical tenant's rent gave him the right to the use of the machinery on the premises, while the appellant contended that the hypothetical tenant would have no such right without making further payments (in addition to the rent), either to the outgoing tenant or to some other person from whom the machines were bought (*b*). In giving judgment the recorder said:

“The question involved is the settlement of the mode in which machinery, such as this is admitted to be, can be made available for the purposes of

(*a*) Before the Recorder of Leeds (Mr. E. TINDAL ATKINSON, K.C.), March 31st, 1904.

(*b*) This contention in substance relies on the decision in *Deron and Exeter Newspaper Co. v. Exeter Union* (1903), Ryde and Konstam's Rat. App. (1894—1904), 101, *supra*, p. 494.

poor law assessment. Machinery by itself is not the subject of rating. If fixed to the freehold, either as the landlord's or as the tenant's fixture, it is, for the purpose of being rated, a part of the freehold, and no difficulty arises. Where the plant and machinery are not affixed to the freehold, but have been placed on the premises to be rated for the purpose of making, and do make, the premises fit for the particular purpose for which they are used (*c*) (to use Lord ESHER's words) they then are capable of being taken into account in ascertaining the rateable value of such premises. In this case the machinery belonging to the tenant, and which is at present on the premises in question, is admitted to come within the above category, and it is common ground between the parties to this appeal that this machinery has, in some way, to be taken into account in arriving at the rateable value. The point that has been so strenuously fought in this case is, in what way is it to be made available. The appellant contends that the value of the *user* of this machinery in connection with the occupation of the premises ought not to be considered, but that the question of the benefit must be limited to the advantage derived from the fact that the machinery affords proof of the convenience of the building for the purpose of the business, and a possible value from the tenant being able to take it *in situ*. The respondents, on the other hand, say that the only way in which you can properly take machinery into account is by taking the hereditament as you find it, furnished and equipped with the necessary machinery, and ascertaining what is the rent which a tenant from year to year will give for such premises as they stand, including, of course, the right to use what he finds there.

It is extraordinary how little decisive authority there is on the point. The earlier authorities which have been quoted are of little or no assistance in this regard, although exceedingly valuable on the point as to what sort of machinery may be treated as adding to the rateable value : and in the leading authority on the above point, the Court of Appeal, in *Tye Boiler Works Co. v. Longbenton* (*c*) carefully and deliberately refrained from expressing any opinion on the method by which value was to be ascertained. In the case of *R. v. Haslam* (*d*), in dealing with the case of the large chambers placed upon the premises used as chemical works, PATTESON, J., said : ' We do not think it necessary to determine whether the chambers erected on the appellant's premises are or are not annexed to the freehold, because we are of opinion that, according to the principle laid down in the various cases on the subject, the rateable value of the premises is undoubtedly increased by the *use* of those chambers,'—showing that the learned judge was of opinion that the additional value of the hereditament was in respect of the *user* of the plant in question, and not merely in consequence of its *existence*. The only case which can be called a direct authority on this point is the case of *Gifford, Fox & Co. v. Chard Union*, which is reported in 6 T. L. R., p. 431, in the Court of Appeal (*c*). I have, however, been furnished with a print setting out the case as stated by the quarter sessions, the proceedings in the Divisional Court and in the Court of Appeal. It is most important to see what was the contention adopted by the sessions, and what were the questions submitted to the court. In paragraph 19 of the case there are set out the findings of the sessions. They found, first, ' that the machinery had been rightly taken into consideration in arriving at the rateable value,' and,

(*c*) (1886), 18 Q. B. D. 81 ; *supra*, p. 485.

(*d*) (1851), 17 Q. B. 220 ; *supra*, p. 479.

(*c*) *Supra*, p. 487.

secondly, 'that the premises were accordingly assessable to the poor rate at the amount at which they would let to a tenant from year to year as a going concern of a lace factory *equipped* with such machinery as was essential to its user as such factory.' There were two questions submitted to the court; first, whether the machinery was to be taken into account at all; secondly, whether, assuming it was, it was taken into consideration upon the proper principle. Now it is clear that not one, but both of these questions would have to be answered if the first question was answered in the affirmative. The only point argued was the first one. The Divisional Court and the Court of Appeal answered that question in the affirmative, and as they affirmed the order of the sessions, it must be taken that they answered the second question in the affirmative also: that the sessions had taken into account the machinery on the proper principle, namely, of a rent which would be paid for a factory equipped with such machinery. The observations in the judgment of Lord ESHER in this case in the Court of Appeal as reported in the Times Law Reports, namely, 'that machinery, whether fixed to the freehold, or not, if necessary to the use of the premises as such, and going to make up the value for which the rent was paid, might be taken into account,' show clearly, to my mind, that he was referring to the user of both premises and machinery as the factor in production of the rent.

"Two main objections which have been urged by the appellant to the principle adopted by the respondents are, first, that in adopting it, you will be rating machinery; secondly, that the tenant buys the machinery and yet has to pay the landlord rent for it.

"As to the first objection, I think the answer is that to take the value which machinery may add to the letting value of the premises is not to take the value of the machinery: the added rent has no fixed relation to the value of the machinery. It is quite true you may have cases where the added value to the rent may very closely approximate to the hiring value of the machinery: where, for instance, the machinery is new, and the building is such that every advantage is gained from the machines by the construction and character of the building itself—in such case you might arrive at the added value by taking the hiring value of the machinery on a percentage basis. But in most cases it would not at all be the fact that the two things would be the same. If new machinery is put into old and inconvenient buildings where the full benefit of the machinery could not be gained, no tenant would give, as an addition, a five per cent. rental on the value of the machinery, or calculate the rent he offered on any such basis. Indeed, the premises in this case afford an illustration of what I mean. Evidence has been given that, owing to the lowness of the rooms, full power cannot be obtained to drive the machinery, which has the effect of detracting from the value of the machinery as applied to this building. The vice of the way in which the Recorder dealt with the valuation in the case of *Crockett v. Northampton Union*, was that he had not considered what was the rental value of the premises with the addition of the machinery, but had arrived at the value of the latter independently of any connection with the premises themselves.

"The second point urged by the appellant was that the tenant buys the machinery, and yet has to pay the landlord rent for it. I think this involves the consideration of the facts of the particular tenancy in question, which

I think is fallacious. The question is, not what this tenant has done in the purchase, or whose property, in this case, the machinery is. For rating purposes you must take the premises as you find them, permanently equipped as engineering works, with all the necessary appliances and machines: as it stands, what is the rent? and the answer to this question shows you what is the rateable value. I am of opinion therefore that the principle by which the rateable value is to be ascertained in this case is that contended for by the respondents, namely, that in ascertaining the rent, you must take into account the value of the user of the machinery as contributing to the rental value of the freehold; but in saying this I am far from saying that such value is to be arrived at by taking the cost or value of the machinery, putting a percentage on such value and adding it to the rent. The increase and value due to the machinery may and will vary in each case owing to a number of causes, such as I have indicated.

"I have now to apply these principles to the case before me. I find the net rental value of the land, buildings and landlord's fixtures, without the rest of the machinery, at 21*l*. To this has to be added what the tenant would give by way of additional rent for these premises, equipped, as they are, with the machinery in them, including the right of user. This I estimate roughly at 10*l*. a year, making the net rateable value 31*l*. For the purpose of an appeal, I may say that if the appellant's contention should be found to be correct, the rateable value should stand at 26*l*."

It was objected, on behalf of the appellant, that as in the result the appeal had succeeded, although the question of principle had been decided in favour of the respondents, the recorder had no jurisdiction to order the appellant to pay the costs of the appeal, either under the Poor Relief Act, 1743 (17 Geo. 2, c. 38, s. 4), or under the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45, s. 5) (*e*). The recorder said there were certainly grave doubts as to jurisdiction, and on this ground declined to make any order as to costs.

Eastern Morning News Co. v. Hull Guardians.—In this case (*f*), which was decided fourteen days after *Kirby v. Hunslet Union*, *supra*, the machinery in question consisted of linotype and other printing machines similar to those dealt with in *Deron and Exeter Newspaper Co. v. Exeter Union* (*g*). The total value of all the machinery (including that which was in dispute and that which was admittedly rateable) was agreed at 4,725*l*.; and the appellants estimated the value of the disputed machinery at 4,325*l*. The recorder allowed the appeal with costs and reduced the rateable value appealed against from 440*l*. to 360*l*., but held that the appeal raised no disputed point of law, but merely questions of fact, and therefore refused to state a case for the opinion of the High Court.

(*e*) *Vide supra*, p. 598.

(*f*) Before the Recorder of Hull (Mr. HAROLD THOMAS), April 14th, 1904.

(*g*) (1903). Ryde and Konstam's Rat. App. (1894—1904), 101; *supra*, p. 494.

The recorder did not state how he arrived at his decision ; but he appears not to have taken five per cent. on the capital value of the machinery in dispute as representing either gross or rateable value. No doubt the following may be described as questions of fact, viz. : (1) What rent would a tenant give for land and buildings if there were no machinery in them ? (2) What rent would he give for the right to use land, buildings, and machinery combined ? (3) What rent would he give for land and buildings if he had the opportunity of acquiring the machinery for further payments beyond the rent ? But the question which (if any) of these questions is the right one to put before the tribunal on a rating appeal, is surely a question of law (*h*).

(*h*) See *Mersey Docks v. Birkenhead*, [1901] A. C. 175, at pp. 179, 180; *supra*, p. 167.

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